

# THE MEJELLE

BEING  
AN ENGLISH TRANSLATION OF MAJALLAHEL-AHKAM-I-ADLIYA  
AND A COMPLETE CODE ON ISLAMIC CIVIL LAW

Translated by  
C. R. TYSER, B. A. L.  
*President, District Court of Kyrenia*

D. G. DEMETRIADES,  
*Registrar, District Court of Kyrenia*

ISMAIL HAQIQI EFFENDI,  
*Turkish Clerk, District Court of Kyrenia*

with a Foreword by :  
Mr. JUSTICE S. A. RAHMAN, H. Pk.  
*Judge, Supreme Court of Pakistan*

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## FOREWORD

By

Mr. Justice S. A. RAHMAN, H.Pk.

*Judge, Supreme Court of Pakistan*

The Constitution of the Islamic Republic of Pakistan contains a solemn declaration, in the shape of a directive principle of policy, that no law shall be repugnant to the teachings and requirements of Islam as set out in the Holy *Quran* and *Sunnah* and that all existing laws shall be brought into conformity with these two fundamental sources of law. A duty is, therefore, cast on those learned in the law, to explore the vast area of the development of Islamic Law, through the centuries after the *Hejra*, in order to bring out the essential principles on which the edifice of Islamic Law rests. The exigencies of modern life may require reinterpretation and reorientation of the original texts to meet the ever changing requirements of a developing society. But the work has to proceed with a reverential caution and with due regard to the labours and achievements of the old doctors of the law. It is in this context, that the importance of the present publication, which is comprised of the English translation of the *Mejelle*, the old Turkish Civil Code, has to be assessed. The publication owes its inspiration to Mr. Justice A. R. Cornelius, Chief Justice of the Supreme Court of Pakistan and all students of Islamic Law would feel indebted to him for making this translation available for reference and study.

The *Mejelle Ahkame Adliye*, to give it its full name, was elaborated between 1869 and 1876 as a part of the Legislative purpose of the *Tanzimat*, initiated in Imperial Turkey, with the approval of the Sultan. The Penal Code of 1850 and the Commercial Code of 1861, were its predecessors, but these two compilations had been largely based on the laws of European countries. The *Mejelle* represents an attempt to codify that part of *Hanafi fiqh* which treats of *muamalat* (transactions between people). The codification was the work of a Commission of Jurists, headed by Ahmad Djevdet Pasha, the Minister of Justice. In a preliminary report (*mad-bata*) dated the 18th *Dhu' I Hididja* 1285 A. H. (April 1, 1869) the Commission explained the reasons why a codification of this matter had become necessary. The newly instituted secular Tribunals (*Nizamiye*) had often to deal with matters of common civil law but the Judges were not as a rule, well-versed in *Fiqh*. It was, therefore, arranged that the President of the Religious Tribunal should also work as the President of the secular Tribunal. This did not prove satisfactory. It was consequently felt desirable that the main points of the Islamic law of



obligations should be presented in one volume for facility of consultation. The Editors have, in the main, followed those opinions of *Hanafi* doctors which are most in harmony with the exigencies of modern life and business. It is, however, expressly stated that the introduction (*Mukaddime*) and the first Book, were submitted to the Shaikhul Islam, and approved by him as well as by other prominent Jurists.

Though the different parts were successively sanctioned by Imperial *Khatt*, the *Mejelle* cannot be said to have had an exclusive authority in the matter regulated. The Judges were left free to form their own opinions as a result of the study of the *Hanafi* Law Books, and this compilation was used as a guide and a useful book of reference. And therein lies its principal value even today.

The *mukaddime* of the *Mejelle* contains, in 100 articles, a number of principles (*Qawaid*) as already elaborated by *Ibn Nudjaim* and his school. Then follow sixteen books beginning with the *Kitabul Buyu'* (the book of sales). The last four books deal mostly with procedural matters. In all there are 1851 articles. The first part of each book gives definitions of the technical law terms used, and most of the articles are followed by examples taken from the collections of *fatwas*. The Introduction and the first Book obtained the Imperial sanction on the 8th Moharram 1286 A. H. (April 20, 1869) and the last two books on the 26th Shaban 1293 A. H. (September 16, 1876). The marriage laws are not dealt with in this book. A separate compilation on that subject, called the *Huququl Aila* was promulgated in Turkey, drawing mostly on *Hanafi* and partly on *Maliki* law.

On February 17, 1926, a new Civil Code (*Kanun-i medeni*) which is substantially the Swiss Code, was adopted by the Grand National Assembly of Turkey, and since then the authority of the *Mejelle* has disappeared in that country. But with certain amendments, it is still in force, in Iraq, Syria and Jordan.

The English translation presented here was the work of three officers of the District Court of Kyrenia, C. R. Tyser, B. A. L., President, D. G. Demetriades, Registrar, and Ismail Haqqi Effendi, Turkish Clerk of that Court. It was first printed at the Government Printing Office, Nicosia, Cyprus, in the year 1901. The Translation was based on the Turkish text of the *Mejelle* and in their introduction, the translators state that they had tried to translate word by word, that text, with a view to accuracy rather than to style. The result, however, is a happy and lucid exposition of the original text. It is hoped that the publication of this compendium will be welcomed by the Bench and the Bar alike, and will serve to stimulate interest in research in Islamic Law.

October 20, 1967.



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## COPY OF THE REPORT MADE BY THE MEJELLE COMMISSION

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As is known to your omniscient Highness, the Sultan's Chief Vizier in the same way as the practical rules of the Sher', so far as relates to worldly matters, are divided into the parts marriage, transactions and punishments, so also the fundamental Laws of civilized nations are divided into these three parts, and the part relating to transactions is called Civil Law.

Canon Law divided into the parts marriage, transactions and crime.

The same division exists in the law of other nations.

But in these times by reason of mercantile transactions having become much more extensive, very many matters which occur, like bills of exchange and bankruptcy, having been excluded from the original Laws, a Commercial Code somewhat different has been enacted containing these excluded matters.

The mercantile Code.

And while this is the Law followed in mercantile matters, in other matters again reference is made to the Civil Law.

Civil Law sometimes applicable in commercial cases.

*For example.*—In the Commercial Court, in some matters like pledge, suretyship and agency, arising in an action tried by the Commercial Law, reference is made to the original Law.

In private civil claims also arising from a criminal act, the process taken is like this.

And in criminal cases.

In the Ottoman Empire many Ordinances and Codes have been made, in ancient times and recently, which are equivalent to the Civil Law.

The Civil Law of the Ottoman Empire.

In case these are not sufficient for the arrangement and decision of all transactions, the part of the practical rules of the Sher' (Ilm Fiq-h) about transactions is ample and sufficient for the requirements in the matter.

And lest there should be found difficulties as regards the reference of claims to the Sher' or Statute Law, the Temyiz Huquq Mejliiss, being under the presidency of the Hakims, in the same way as they try Sher' matters by the Sher' Law, try Nizam matters by the Nizam Law, and so the difficulty is solved.

Civil and Sher' Law both administered in Temyiz Huquq Mejliiss.



Dissatisfaction with decisions because Sher' not known.

But since the practical part of the Sher' ('Ilm Fiq-h) is the foundation and source of the Laws and Codes of the State, and the subsidiary matters, which arise in question tried by the Codes, come to be tried by the application of the precepts of the Sacred Law (Fiq-h), and by reason that the members of the Mejliss Temyiz, other than the Hakim, not knowing the precepts of the Sacred Law, think that perhaps the Hakims, when they are outside the enactments contained in the Ordinances and Codes, mould cases as they wish by favour, these subsidiary matters become a cause of a quantity of evil minded conduct and talk.

Difficulty of applying Sher' Law in the Commercial Courts.

In the Commercial Courts also of the Ottoman Empire, where the Imperial Commercial Code is the Law in force, there are great difficulties to be borne in respect of the side issues in a suit, which do not depend on commerce.

It arises in the following way :

If recourse is had to the European Laws, they are not a ground of judgment in the Ottoman Courts, because they have not been made law by Imperial Irade.

As regards a reference to the Sher' Law also it is necessary that the Sher' Court should take side issues of that sort from the beginning, whereas by reason of the manner of trial of the two Courts being fundamentally different, naturally recourse cannot be had to the Sher' Court from the Commercial Court by reason of the splitting up made in the action.

If it is said "Let the members of the Commercial Court have recourse to the Sacred Law books," this also is not possible, because, as regards matters dependent on the Sher' Law, they are in the same state as the members other than the Hakim of the Mejliss Temyiz.

Difficulty in ascertaining Canon Law.

The science of the practical part of the Sher' ('Ilm Fiq-h), being a boundless sea, the knowledge of how to solve a proposition, by drawing the necessary propositions, the pearls, from it, depends on much experience and practice.

Especially the Hanefi doctrine.

Especially, for the Hanefi sect, at different times, many commentators arose, and very many differences occurred. And the practical part of the Sher' (Fiq-h) according to the Hanefi could not be revised like the practical part of the Sher' (Fiq-h) according to the Shafi'i, and became very split up and disordered.



In this way one can see there exists great difficulty, in the application of it to events, by selecting the true opinion in the many opinions differing from each other.

Moreover the precepts of the practical part of the Sher' (Fiq-h), which are based on use and custom, with the change of times, change also themselves.

Change of  
legal  
precepts  
based on  
Custom.

*For example.*—In the opinion of ancient lawyers, it is sufficient to see one room of a house, which is going to be bought and sold, and, in the opinion of modern lawyers, it is necessary to see every room.

This, which is not a difference in respect of the evidence, arose perhaps from a difference of use and custom in building. Because, formerly, by reason of all the rooms of houses being built in one way, the seeing of one of them made it unnecessary to see the other rooms, latterly, by reason of its having become the custom to build the rooms of houses different, it has become necessary to see every room of a house.

In fact the condition required consists in acquiring a sufficient knowledge for the purposes of the purchase. The fundamental rule of the Sher' is not altered.

But the application of the rule to the circumstances of this case is changed with the change of the circumstances of the time.

Very much care is required also to distinguish between a change in what is required to be proved and a change caused by time like that above-mentioned.

As for the acquisition of knowledge from the foundation by collecting the precepts of the practical part of the Sher' (Fiq-h), it is very hard.

Consolida-  
tion of  
Canon Law  
difficult.

At one time although there met together competent men and men learned in the Law of the time, to make a collection of the precepts of the practical part of the Sher' according to the Hanefi doctrine, and although they tried and wrote books like the Tatar Khanie and the Fetavai Jihankyrie, yet it was not possible to collect and comprise all the branches of the practical precepts of the Sher' (Fiq-h) and the differences of the sects.

Former  
attempts.

In fact the fetva books mean a compilation containing the fetvas given for the application of the rules of the practical parts of the Sher' (Fiq-h) to facts. Whereas it is unnecessary to say how difficult would be the collecting of the fetvas given by the Hanefi authorities from the beginning up to the present time, sufficiently.



Ibn Nejm.

For this purpose Ibn Nejm, collected a quantity of rules and general precepts, and opened a good path by his way of inserting into the collection, the branches of the practical propositions of the Sher' (Fiq-h), which come under those rules and precepts.

After his time, by reason of there not being the former favourable circumstances for maturing lawyers and men of science, the time was not favourable for their making endeavours in this way and for the appearance of persons, who would know how to make into a Royal road the track which he had opened, by following in his traces.

Scarcity of persons qualified to be judges.

And now moreover, by reason of there having become everywhere a scarcity of people skilled in the knowledge of the practical part of the Sher' (Fiq-h) it has become difficult to cause to be found members for the Nizam Courts, who will know how to solve doubts by referring to the Sacred Law Books, when it is required, to say nothing of finding enough Qadis for the Sher' Courts found in the Ottoman Empire.

Advantages of a book of the Laws.

For this reason if a book be made, easy to understand, about the practical part of the Sher' (Fiq-h) dealing with transactions between people, to include accepted opinions only, which are free from dispute, every one will study with facility and will refer his transactions to it, and also if there is a book which is small and conveniently arranged, there will be great benefits for the naibs, and the members of the Nizam Courts, and the Government administrative officials, who as a consequence of being qualified by the study of the Sher' precepts, will make their acts conform with the Sher' Law, to the best of their ability, when it is required to do so. And further the book being held in esteem and conformed to in the Sher' Court, it will become unnecessary to frame Laws for civil suits in the Nizam Courts.

The production of such a book, based on a study of the Law, for a long time has been desired.

Previous Committee.

And so much is this the case that a Committee of Lawyers was formed in the precincts of the Legislative Council for this purpose, and a considerable number of maxims were written. But as it did not come to a complete work, the placing of this on a firm foundation, being most important, remained like many beneficial works, for the long wished for time, the happy time, the time of the Sultan, in accordance with the saying "Every work has its appointed time".



Since His High Imperial Majesty, who meets with success by God's goodness and shares in the fruit of the abundant blessing of God, for the accomplishment of this, in the ranks of the many good records, which are regarded with well founded pride, has ordered to be entrusted to his humble servants the important work, the production from the practical part of the Sher' (Fiq-h) of a beneficial work, so that it shall be sufficient for application to the transactions of people, which happen every day, according to the wants of the time, we, in obedience to the order, met in Committee in the precincts of the High Court, and, by our Committee, who are collecting the esteemed opinions of the Hanefite authorities about matters being clearly necessary for the transactions of the time, and also cases from the part of the practical part of the Sher' (Fiq-h) about transactions, have completed a first book, with a preface, for the beginning of the arrangement of a Mejelle, [to be called by the name Akhiam Adlie' (Rules of Justice and Equity) and divided into many books] and a copy of it has been given by us to the Fetva Penanhi (Sheikh ul Islam), who knows the truths of the Quran, and copies were given to certain persons, who had sufficient knowledge of the matter and were skilled in the science of the practical part of the Sher' (Fiq-h), and after alterations had been made in accordance with their suggestions, and it had been fair copied, it was presented by us to the Grand Vizier. Its translation into Arabic is now being carried out and the Committee is occupied in the writing and compiling of other books.

On reading it your Highness will remark that the second part of the prologue consists of rules of the Fiq-h collected by Ibn Nejm and the lawyers who followed his way of thinking. The judges of the Sher' Court cannot give judgment by these alone until they find an authority (naql sarih).

Prologue  
contents.  
The maxims.

But their use is great for the acquisition of the precepts of the Fiq-h and those, who have studied them possess knowledge of the precepts and the reasons for them, and the other officials can have recourse to them in every case. By these, too, a man can make his affairs conform, as nearly as possible, with the Sher' Law. Consequently they are put as a prologue and are not written as a book or a chapter with a title.

Although in Sher' Law Books generally the first principles are set out mixed with the precepts, in this Mejelle, the technical terms used in every book are set out so as to make a preface to

Form of  
Book.



that book, and the precepts are written so as to be arranged in order, but a quantity of precepts from the fetva books have been added and inserted, as examples, to explain these fundamental precepts.

Conditions  
in contracts.

Business transactions, which take place in our time are generally dependent on some conditions. And by reason that the chapter "Sale on conditions," [which is the most important chapter of the book about sales, because of the sorts of conditions which come into existence when the sale is made, generally making the sale illegal according to the Hanefi doctrine] has been the cause of much controversy and discussion to our humble Committee, it seemed right to set out below a summary of the matters discussed.

Summary of  
discussion  
about con-  
ditions.

As regards sale with condition generally the opinions of the Interpreters of the Law are opposed to one another.

Maleki  
doctrine.

By the Maleki doctrine the seller can make a condition reserving a special benefit, in respect of the thing sold, in favour of himself, for a limited time.

Hanbali  
doctrine.

According to the Hanbali doctrine he can do so for an unlimited time.

But that the seller should have a right, which is not allowed in the case of the buyer, seems contrary to judgment and logic.

Ibn Abi Leile  
and Ibn  
Sheberme.

But their highnesses Ibn Abi Leile and Ibn Sheberme (may God be good to them), of the Interpreters of the Law who lived at the same time as His Highness the great Imam (may God be good to him), their followers becoming afterwards extinct, are found in their opinions to be completely opposite the one to the other in this respect, so that in the opinion of Ibn Abi Leile in every case the sale and condition are unlawful, and in the opinion of Ibn Sheberme, without exception both the sale and the condition are lawful.

The doctrine of Ibn Abi Leile seems opposed to the tradition of Muhamed, which says "Let Muslims keep their conditions." The doctrine of Ibn Sheberme although it agrees completely with that tradition, yet, since the buyer and seller when making the contract are able to insert conditions the carrying out of which is not possible and lawful, the proposition, as regards the observing of the condition, is a rule, which admits of exceptions and limitations by reason of its being one of the admitted truths, in the opinion



of persons learned in the Sacred Law, that the keeping of a condition must be made as far as may be possible.

Therefore, in the Hanefi doctrine conditions of sale take a middle course and are divided into three sorts called lawful (jaiz), causing defect (mufsid), and annulling (lagv).

So that a condition benefiting one of the parties, where it is not a stipulation which is one of the necessary parts of the sale, or where it does not support a necessary stipulation in the sale is (mufsid) a cause of defect and the sale is (fasid) bad ; and a sale, with a condition which benefits none of the parties, is lawful and the condition is of no effect, because the intention in the buying and selling is to pass the property in the thing, that is to say, the thing is, that without impediment the purchaser should become owner of the thing sold and the seller the owner of the price.

Whereas the performance of a condition which is beneficial to one party being desired by that party and avoided by the other party, may give cause to dispute, in this case it means that the contract of sale is not a complete sale.

But since use and custom put a stop to disputes, a sale with a well known condition is lawful.

Mercantile transactions being, as stated above, in a way, altogether exceptional, and by reason that in most trades, there has been established a customary mode of carrying on business in each, and that custom as it comes into existence is observed there remains only the badness of a number of scattered conditions, made outside use and custom by those who trade, to be discussed.

By reason of these not being of frequent value, and by reason of there being no room for the discussion about them, while it was not thought fit to accept the doctrine of Ibn Sheberme, because it is not in accordance with the Hanefi doctrine for simplifying the transactions of the time, it has been thought sufficient to set out the conditions, which do not make a contract invalid according to the Hanefi doctrine. This is done in the fourth section of the first chapter and in other sections.

Finally, as most of the articles written in this Mejelle refrain from going outside the Hanefi doctrine, and are in force and acted upon in the Fetva Khani at the present time, there seems no necessity for a discussion about them.

The Hanefi doctrine. Conditions divided into lawful, cause of defect and void.

Condition benefiting one party is a cause of illegality.

Condition which benefits neither party, void.

Why condition benefiting one party, illegal.

Condition lawful if customary.

Mercantile conditions.

Conditions not customary.

Most of the articles in the Mejelle need no discussion.



Bases of  
certain  
articles dis-  
cussed.

Sale of non-  
existing  
fruit,  
Art. 207.

As however, there have been accepted, as valid in Law, the opinions of certain learned Imams of the Hanefi lawyers, because of their being most suitable to the business of the time and easier for men, their known sources, and the grounds on which they are based, are set out below.

According to Articles 197 and 205, the sale of a non-existing thing is not good. Since however the fruit and produce of vegetables and flowers, like artichokes and roses, come one part after another, some not appearing, and others coming and passing away, for this reason it has become the use and custom to sell the fruit of things of this sort in a lump, both that which has appeared and that which has yet to come.

In this sort of produce the including of the non-existing things with those which exist, as inseparable from them, and selling them in a lump, the honourable Imam Muhamed bin Hassan el Sheybani (may God be good to him!), approved of and declared lawful. And since Imam Fazili and Shemsu'l E'imetu'l Halwani and Emir Bekir bin Fazul (may God be good to them) have given fetvas in accordance with his opinion, and as men are not able to pass from this sort of use and custom, and by reason of its being better to put men's transactions on a sound basis, as far as possible as regards illegality, in this Mejelle also, in the Art. 207, the opinion of Muhammed has been preferred.

Sale in a  
lump,  
Art. 220.

In the precept about sale in a lump, as for example when a heap of corn is sold for the payment of so many piastres a keyl, in the opinion of his honour The Great Imam (may God be good to him) the sale is only good in respect of one keyl and in the opinion of the two Imams (may God be good to them) the heap is all sold, however many keyls there may be, and it is necessary that the price should be given for it.

By reason of the opinion of the two Imams being taken in this matter, as well as the opinion of many lawyers, such as Sahib Hedaieh, for the purposes of making easy men's transactions, Art. 220 is written in that way.

Time for  
option by  
condition,  
Art. 300.

In the opinion of his honour The Great Imam the time of a condition for option cannot be more than three days. In the opinion of the two Imams it is lawful, for however many days may be agreed. In this matter also their opinion by reason of its being looked upon as most convenient for business at the present time, was taken, and in the 300th Article it is inserted that the



time is unlimited.

In the same way this difference arose also in respect of option for non-payment of the price, as to the time being unlimited. The opinion of the honourable Imam Muhamet (may God be good to him) although it stood alone, was preferred by reason of its being more convenient for man's affairs, and in Art. 313 it is left for an unlimited time, the words of the article being "up to such a time."

Although in the opinion of his honour The Great Imam, when there is a contract for a skilled workman to make a thing, the person who orders the thing can go back from the sale; in the opinion of his honour Imam Abu Yusuf (may God be good to him), he cannot go back, if the thing made is in accordance with the description.

Now, however, since many manufactories are made in the world, cannons and guns and steamers being caused to be made by orders and under agreements, and by reason of the business of contracting with skilled workman to make things having become one of the big businesses of the present day, and because the giving of an option, to the person who gave the order for a thing to be made, would be destructive of many great businesses, and by reason that the special contract for the making of goods (while it is contrary to legal analogy) is a business founded on custom, and bears an analogy to purchase by payment in advance (Art. 123), which is approved of by Law, as based on the custom of people, and looking at the business of the present times, it seemed necessary to prefer the opinion of the Imam Abu Yusuf, and Art. 392 has been written in accordance with it.

Because it is necessary to act according to whatever opinion his Majesty, the Leader of the Muslims orders that people should act, the report is laid before the Grand Vizier also, in order that he may order it to be decorated with the Imperial writing of his Majesty the Sultan, if on trial the enclosed Mejelle is approved by him.

8th Zilhije, 1885. 10th March, 1885.

Ahmed Jevdet, Minister of Justice.

Syed Khalil, Inspector of Evqaf.

Seif E'd-din, a Counsellor of State.

Seid Ahmed Khoulousi, a Member of the High Court of Justice.

Seid Ahmed Hilmi, a Member of the High Court of Justice.

Muhammed Emin, a Counsellor of State.

Ibn 'Abedin Zade 'Aladin, Member of the Committee,

Time for  
option on  
non-pay-  
ment,  
Art. 313.

Contract for  
work and  
materials,  
Art. 392.



## GLOSSARY

*For full definition of words see Articles referred to.*

- Adedi* (عددی)—Things counted (Art. 135).  
*Adediat mutaqaribe* (عدديات متقاربه)—Things counted and of the same price (Art. 147).  
*Adediat mutefavite* (عدديات متفاوته)—Things counted and of different price (Art. 148).  
*Adl* (عدل)—Depositee of pledge (Art. 705).  
*Ajir* (أجر)—A person who lets (Art. 409).  
*Alirim*—1st pers. sign. aor. of Almak, to buy.  
*'An Inkiar sulh* (عن انكار صلح)—Compromise on denial (Art. 1535).  
*'An Iqrar sulh* (عن اقرار صلح)—Compromise on admission (Art. 1535).  
*'An sekyut sulh* (عن سكوت صلح)—Compromise on silence (Art. 1535).  
*'Aqar* (عقار)—Immovable property (Art. 129).  
*'Aqd* (عقد)—Contract (Art. 103).  
*'Aquidein* (عاقدين)—The two contracting parties (Art. 162).  
*Arazi Memluke* (اراضى مملوكة)—(Land Code, Art. 2).

*Arazi Memluke is of four kinds.*

The first kind is building sites found inside towns and villages, and places up to half a donum in extent, considered necessary for the completeness of habitation, found on the borders of towns and villages.

The second sort is land which has been granted by a good patent from the Crown, to be held and disposed of, in the sorts of ways that mulk property is held and disposed of, by separating it from Arazi Mirie, for a reason allowed by the Sher' Law.

The third kind is Arazi Ushrie.

The fourth kind is Arazi Kharajie.

*For example.*—Lands divided amongst the conquerors and granted to them by patent at the time of the conquest are called Arazi Ushrie; and lands remaining and being allowed to remain in the hands of the original inhabitants, not being Muslims, are called Arazi Kharajie.



*Kharaj arazi is divided into two.*

One division is called *kharaj Muqaseme*, for that there is something appointed to be taken, from a tenth to a half, according to the capability of the land, from the produce of the land.

The other is *Kharaj Muwazaf*, for which a fixed sum of money has been fixed and assigned, by way of a fixed payment upon the land.

Of all *Arazi Memluke* the thing (*raqabe*), that is to say, the thing itself and its ownership belong to the person, who is the owner. It passes by inheritance like property and other things, and allows of rights, like dedication, gift, pledge and pre-emption. Whether it be *Arazi Ushrie* or *Arazi Kharajie*, when it returns to the *Beit-ul-mal* on the death of the owner without heirs, it acquires the rights of *Arazi Mirie*.

By reason of the rights and transactions in respect of the four kinds of *Arazi Memluke* being explained in the books of the *Fiq-h*, in this Land Code, there will be no mention about the rights of *Arazi Memluke* (Land Code, Art. 2).

*Arazi Metruke* (اراضى متروكة) — (Art. 1271).

*Arazi Metruke is of two sorts.*

One consists of places reserved for the general public.

Public roads are of this sort.

The other sort consists of places, which are assigned and preserved for the inhabitants of a town or village, or a number of towns or villages. Pasture lands, assigned to the inhabitants of a town or village, are of this sort (Land Code. Art. 5).

*Arazi Mevat* (اراضى موات) — (Art. 1270). (See also Land Code, Art. 103 and Art. 6).

*Arazi Mevqufe* (اراضى موقوفه) — (Land Code Art. 4).

*Arazi Mevqufe is of two divisions.*

The first division is land truly made *vaqf* in accordance with the *Sher'* Law being from *Arazi Memluke*.

Of *Arazi Mevqufe* of this category the thing itself and the ownership of it (*raqabe*), and the rights of disposition (*tassaruf*) belong wholly to the *vaqf*; and, because in respect of these, the part of the Civil Law dealing with transactions is not in force, and because whatever may be the terms of the dedicator, it is necessary to act on that



- Bey' lazim* (بيع لازم)—A binding sale without any option.  
(Art. 114). (See Arts. 367, 376).
- Bey' mevquf* (بيع موقوف)—A sale depending on the rights of another (Art. 111). (See Arts. 368, 377, 378).
- Bey' mun'qid* (بيع منقذ)—A concluded sale (Art. 106).
- Bey' muqayaza* (بيع مقايضة)—Barter (Art. 122). (See Art. 379).
- Bey' nafiz* (بيع نافذ)—A sale not depending on the rights of another (Art. 113). (Arts. 365, 374, 375, 378).
- Bey' sahih* (بيع صحيح)—A good sale (Art. 108).
- Bey' ta'ati* (بيع تعاطي)—Sale by payment and delivery (Art. 175).
- Beyyine* (بينه)—Strong evidence (Art. 1676).
- Bida'a* (بضاع)—Capital given to another to be used for the profit of the donor (Art. 1059).
- Buyu'* (بيوع)—Plu. of *Bey'*—See *bey'*.
- Dawa* (دعوى)—An action (Art. 1613).
- Defi'* (دفع)—A claim to rebut the plaintiff's action (Art. 1631).
- Deyn* (دين)—A thing owing (Art. 158).
- Dunum* (دونم)—1600 square arshuns. 939.3 square metres (Redhouse).
- Ejir* (اجير)—A person giving himself for hire (Art. 413).
- Ejr misl* (اجر مثل)—A fair wage (Art. 414).
- Ejr musemma* (اجر مسمى)—Wage fixed in the contract (Art. 415).
- Emanat* (امانات)—Plu. of *emanet*.
- Emanet* (امانت)—A thing held in charge (Art. 762).
- Emin* (آمين)—A person in charge of a thing (Art. 768).
- Emlak* (املاك)—Plu. of *mulk*. (See also *Arazi Memluke*).
- Fa'il Mubashir* (فاعل مباشر)—One personally destroying a thing (Art. 887).
- Fahish* (فاحش)—Excessive (Art. 165).
- Fasid* (فاسد)—Bad but not void. (Art. 109). (See Arts. 364, 366, 371, 372, 373).
- Fesad* (فساد)—Any state or act that is not good (Redhouse).
- Fetva* (فتوى)—An opinion as to a requirement of *Sher' Law* given by an officer called "Mufti."
- Fiq-h* (فقه)—The practical propositions of the *Sher' Law* (Art. 1).
- Fazuli* (فضولى)—One disposing of property without right (Art. 112).
- Ghabn fahish* (غبن فاحش)—Excessive deception in value of goods (Art. 165).



- Ghalle* (غله)—Produce of property.
- Ghasb* (غصب)—To commit a tort (Art. 881). (Arts. 901, 918).
- Ghasib* (غاصب)—A tortfeasor (Art. 881).
- Ghayr* (غير)—The negative prefix.
- Ghayr menqul* (غير منقول)—Immovable property (Art. 129).
- Hait* (حائط)—Wall, fence, partition (Art. 1047).
- Hajet* (حاجت)—Need, requirement (Redhouse).
- Hajir* (حجر)—To restrain a person (Art. 941).
- Hakem* (حكم)—An arbitrator (Art. 1790).
- Hakim* (حاكم)—A judge (Art. 1785).
- Haqq mesil* (حق مسيل)—Right of drip from a house (Art. 144).
- Haqq murur* (حق مرور)—Right of passage (Art. 142).
- Haqq shefe* (حق شفه)—The right to drink water (Art. 1263).
- Haqq shurb* (حق شرب)—A share of a running stream (Art. 143).
- Haqq tariq* (حق طريق)—A right of way (Redhouse).
- Harim* (حريم)—Surrounding land over which rights extend (Art. 1281).
- Hawale* (حواله)—Transfer of a debt (Art. 673).
- Hawale mutlaqa* (حواله مطلقه)—A transfer of a debt without condition (Art. 679).
- Hawale muqayyede* (حواله مقيدة)—A transfer of a debt with condition to pay from money of the transferor in the hands of the transferee (Art. 678).
- Hedyye* (هدیه)—Property given (Art. 834).
- Hibe* (هبه)—To give (Art. 833).
- Hissa Sha'ia* (حصه شایعه)—An undivided share (Art. 139).
- Hitan* (حيطان)—Plu. of Ha'it. (See Ha'it).
- Hukm* (حكم)—The giving of a judgment (Art. 1786).
- I'are* (اعاره)—To lend property for use (Art. 766).
- Ibaha* (اباحه)—To give leave to consume gratuitously (Art. 836).
- Ibda'* (ابضاع)—To give capital to another, for the donor to take the profit (Art. 1059).
- Ibra* (ابرا)—To release another (Art. 1536).
- Ibra-i-'amm* (ابراً عام)—To give a general release (Art. 1538).
- Ibra-i-isqat* (ابراً اسقاط)—To release by way of compromise (Art. 1536).
- Ibra-i-istifa* (ابراً استیفا)—To release by admission (Art. 1536).
- Ibra-i-khas* (ابراً خاص)—To release from a particular claim (Art. 1537).



*Ida'* (ايداع)—To deposit for safe keeping (Art. 764).

*Ihtiyaj* (احتياج)—A being or becoming in want of a thing, want (Redhouse).

*Ihya'* (احيا)—To improve land (Art. 1051).

*Ijab* (ايجاب)—Proposal for a contract (Art. 101).

*Ijar* (ايجار)—To let for hire (Art. 404).

*Ijare* (ايجاره)—Rent. To let for hire (Art. 405).

*Ijare lazime* (اجاره لازمه)—A letting without an option (Art. 406).

*Ijare munjeze* (اجاره منجزه)—A letting from the present (Art. 407).

*Ijare muzafe* (اجاره مضافه)—A letting from a future time (Art. 408).

*Ikrah* (اكراه)—To compel a person (Art. 948).

*Ikrah ghayr mulji* (اكراه غير ملجى)—To use strong compulsion (Art. 949).

*Ikrah mulji* (اكراه ملجى)—To use less compulsion (Art. 949).

*'Ilm* (علم)—Knowledge, science (Redhouse).

*Imam* (امام)—A leader in prayer (Redhouse).

*Infraq* (انفاق)—To spend property (Art. 1053).

*In'iqad* (انعقاد)—The making of a contract (Art. 104).

*Iqale* (اقاله)—To annul a contract (Art. 163).

*Iqrar* (اقرار)—To make an admission (Art. 1572).

*Irtihan* (ارتهان)—To take a pledge (Art. 702).

*Isti'are* (استعاره)—To take a loan of property (Art. 767).

*Istijar* (استيجار)—To take on rent (Art. 404).

*Istishab* (استصحاب)—To decide for the continuance of a thing (Art. 1683).

*Istisna* (استثنا)—To contract with an artisan to make a thing. (Art. 124).

*Ittihab* (اتهاب)—To accept a gift (Art. 833).

*Izn* (اذن)—To remove a prohibition (Art. 942).

*Iztirar* (اضطرار)—A compelling, a constraining.

*Jaiz* (جائز)—Admissible, right, obligatory (Redhouse).

*Jebr* (جبر)—A compelling, restraining (Redhouse).

*Jins* (جنس)—Genus (Art. 140).

*Juzaf* (جزاف)—A bargain in the lump (Art. 141).

*Kefalet* (كفالت)—To become surety (Art. 612).

*Kefalet bil derk* (كفالت بالدرك)—To guarantee the return of the price if the seller has no title (Art. 616).



*Kefalet bil mal* (كفالت بالمال)—To be surety for the giving of something (Art. 614).

*Kefalet bil nefs* (كفالت بالنفس)—To become bail (Art. 613).

*Kefalet bil teslim* (كفالت بالتسليم)—To guarantee the delivery of property (Art. 615).

*Kefalet munjeze* (كفالت منجزه)—Unconditional guarantee (Art. 617).

*Kefil* (كفيل)—A surety (Art. 618).

*Keyl* (كيل)—A bushel.

*Keyli* (كيلی)—Things measured by the keyl (Art. 133).

*Khali* (خالی)—Empty, unoccupied (Redhouse).

*Khalifa* (خليفة)—A successor of Mohamed as Chief of Islam (Redhouse).

*Khiyar* (خيار)—Having an option (Art. 116).

*Khiyar Ayb* (خيار عيب)—Option for defect (Art. 327).

*Khiyar Naqd* (خيار نقد)—Option on non-payment (Art. 313).

*Khiyar ru'yet* (خيار رويت)—Option on inspection (Art. 320).

*Khiyar ta'yin* (خيار تعين)—Option of choice (Art. 316).

*Khiyar vasf* (خيار وصف)—Option for misrepresentation (Art. 310).

*Kile* (كيله)—A bushel (Redhouse).

*Lazim* (لازم)—Inseparable, necessary (Redhouse).

*Ma'dud* (معدود)—A thing which is counted (Art. 135).

*Maghsab* (مغصوب)—Property wrongfully taken (Art. 881).

*Maghsab min-h* (مغصوب منه)—The owner of property wrongfully taken (Art. 881).

*Mahall* (محل)—A place.

*Mahl'l bey'* (محل البيع)—A thing sold (Art. 150).

*Mahdud* (محدود)—Immovable property with fixed boundaries (Art. 137).

*Mahjur* (محجور)—A person restrained from disposing of his property (Art. 941).

*Mahkyum aley-h* (محكوم عليه)—Judgment debtor (Art. 1788).

*Mahkyum bih* (محكوم به)—A thing adjudged (Art. 1787).

*Mahkyum leh* (محكوم له)—Person for whom judgment is given (Art. 1789).

*Ma'jur* (ماجور)—A thing given for rent (Art. 411).

*Mal* (مال)—A thing which can be acquired as property (Art. 126).

*Mal mutaqavvim* (مال متقوم)—(1). Property acquired (Art. 127).

(2). A thing which it is lawful to enjoy.



- Maqlu'an qimet* (مقلوعاً قيمت)—Value of buildings, &c., pulled down (Art. 884).
- Maraz mevt.* (مرض موت)—*Mortal sickness. Last illness* (Art. 1595).
- Mareh* (ماره)—People who pass along a public road (Art. 1048).
- Masnu'* (مصنوع)—A thing made by an artisan (Art. 124).
- Ma'tuh* (معتوه)—A person of unsound mind (Art. 945).
- Mazara'a* (مزارعه)—A partnership to cultivate land (Art. 1431).
- Mebdi'* (مبضع)—A person who makes an *ibda* (Art. 1059).
- Mebi'* (مبيع)—The thing sold (Art. 151).
- Mebnien qimet* (مبنياً قيمت)—The value of standing building (Art. 883).
- Mefasid* (مفاسد)—Plu. of *Mefsedet*. Any cause of trouble or corruption. Mischief (Redhouse).
- Mejlis bey'* (مجلس بيع)—The meeting for bargaining (Art. 181).
- Mejnun* (مجنون)—Mad (Art. 944).
- Mekful an-h* (مكفول عنه)—Principal debtor (Art. 618).
- Mekful bih* (مكفول به)—The thing guaranteed (Art. 620).
- Mekful leh* (مكفول له)—The creditor guaranteed (Art. 619).
- Mekil* (مكيل)—A thing measured by the keyl (Art. 133).
- Menafi'* (منافع)—Plural of *menfa'at*.
- Menfa'at* (منفعت)—Use, advantage, profit (Red) (Art. 125).
- Menqul* (منقول)—Movable property (Art. 128).
- Merhun* (مرهون)—A thing pledged (Art. 701).
- Meshaqqat* (مشقت)—Hardship, suffering, trouble (Redhouse).
- Meshfu'* (مشفوع)—Real property subject to pre-emption (Art. 952).
- Meshfu' bih* (مشفوع به)—Property by which pre-emption accrues (Art. 953).
- Mesh-hud aley-h* (مشهود عليه)—Person against whom evidence is given (Art. 1684).
- Mesh-hud bih* (مشهود به)—A right proved by evidence (Art. 1684).
- Mesh-hud-leh* (مشهود له)—A person for whom evidence is given (Art. 1684).
- Mesil* (مسيل)—See *Haqq mesil* (Art. 144).
- Mestureh* (مستوره)—Secret enquiry into credibility of witnesses (Art. 1718).



- Mevhub* (موهوب)—A thing given (Art. 833).
- Mevhub leh* (موهوب له)—A donee (Art. 833).
- Merquf* (موقوف)—See *Bey' mevquf* (Art. 111).
- Mevzun* (موزون)—A thing which is weighed (Art. 134).
- Mezru'* (مزروع)—A thing measured by the arshun (Art. 136).
- Me'zun* (مأذون)—A person released from restraint (Art. 942).
- Malik* (ملك)—A thing of which man has become owner (Art. 125).
- Misly* (مثلى)—A thing which can be matched in the bazaars (Art. 145).
- Mu'ar* (معان)—Property lent for use (Art. 765).
- Muadd al istiglal* (معد لاستغلال)—A thing intended to be let (Art. 417).
- Mu'amelat* (معاملات)—Plu. of *mu'amele*. A having dealings and relations with one another (Redhouse).
- Mubashireten itlaf* (مباشرتاً اتلاف)—Directly to destroy a thing (Art. 887).
- Mudarebe* (مضاربة)—A partnership, where one finds the capital and the other the labour (Art. 1404).
- Mudarib* (مضارب)—The partner who finds the labour in a *mudarebe* (Art. 1404).
- Mudda'a* (مدعا)—The thing claimed by the plaintiff (Art. 1614).
- Mudda'a aley-h* (مدعا عليه)—The defendant (Art. 1613).
- Mudda'a bih* (مدعا به)—The thing claimed by the plaintiff (Art. 1614).
- Mudda'i* (مدعى)—The claimant (Art. 1613).
- Muddet Sefer* (مدت سفر)—Eighteen hours journey (Art. 1664).
- Mudi'* (مودع)—A person depositing his property for safe keeping (Art. 764).
- Mufasid*—See *Mufasid*.
- Mufayizin* (مفاوضين)—Partners on equal terms (Art. 1056).
- Muhakem* (محكم)—Arbitrator (Art. 1790).
- Muhal aley-h* (محال عليه)—A person who accepts a *hawale* (Art. 676).
- Mahal bih* (محال به)—A thing transferred by *hawale* (Art. 677).
- Muhal leh* (محال له)—A creditor whose debt is transferred by *hawale* (Art. 675).
- Muhayeh* (مهاياه)—Partition by division of benefit (Art. 419).
- Muhil* (محيل)—A debtor who makes a *hawale* (Art. 674).



- Mu'ir* (معير)—A person who lends for use (Art. 766).
- Mujazefe* (مجازفه)—A bargain in the lump (Art. 141).
- Mujbir* (مجبِر)—A person using compulsion (Art. 948).
- Mujer* (موجر)—A thing given for hire (Art. 411).
- Mujir* (موجر)—A person who lets (Art. 409).
- Mukhbir* (مخبر)—An informer (Redhouse).
- Mukreh* (مكره)—A person illegally compelled to act (Art. 948).
- Mukreh aley-h* (مكره عليه)—A thing done under compulsion (Art. 948).
- Mukreh bih* (مكره به)—The thing causing compulsion (Art. 948).
- Mukyari* (مكاري)—A person who lets for hire (Art. 409).
- Mulk* (ملك)—A thing of which man has become owner (Art. 125).
- Mulk-i-Mutlaq* (ملك مطلق)—(Art. 1678).
- Mulk-bi-sebeben* (ملك بسبب)—(Art. 1678).
- Mumeyyiz* (ميميز)—With understanding (Art. 943).
- Mun'aqid* (منعقد)—Concluded contract (Art. 106).
- Munfa'at*—See *Munfa'at*.
- Muqadderat* (مقدرات)—Things measured, weighed or counted (Art. 132).
- Muqata'a* (مقاطعه)—Rent paid for vaqf land on which there are mulk buildings.
- Muqirr* (مقر)—A person who makes an admission (Art. 1572).
- Muqirr bih* (مقر به)—A right admitted. (Art. 1572).
- Muqirr leh* (مقر له)—The person in whose favour an admission is made (Art. 1572).
- Murahiql* (مراهق)—A male of twelve and not in state of puberty (Art. 986).
- Murahiql-h* (مراهقه)—A female of nine and not in a state of puberty (Art. 986).
- Mursel* (مرسل)—A person who sends a message (Art. 1450).
- Mursel aley-h* (مرسل عليه)—A person who receives a message (Art. 1450).
- Murtehin* (مرتہین)—Pledgee (Art. 704).
- Murur zeman* (مرور زمان)—Prescription (Art. 1660).
- Musalih* (مصالح)—A person who compromises (Art. 1532).
- Musalih aley-h* (مصالح عليه)—The price of compromise (Art. 1533).
- Musalih an-h* (مصالح عنه)—The claim compromised (Art. 1534).



- Musaqat* (مساقات)—Partnership to cultivate trees (Art. 1441).
- Musemma* (مسمى)—Fixed by contract (Art. 153).
- Musennat* (مسنات)—A boundary (Art. 1050).
- Musha'* (مشاع)—A thing containing undivided shares (Art. 138).
- Mushteri* (مشتري)—A purchaser (Art. 161).
- Musmin* (مشن)—A thing sold for its equivalent price (Art. 155).
- Musta'ar* (مستعار)—Property lent for use (Art. 765).
- Mustahaqqul qal' olaraq qimet* (مستحق القلع اوله رق قيمت)—Value of standing buildings to pull down (Art. 885).
- Musta'ir* (مستعير)—A borrower (Art. 767).
- Mustasna'* (مستصنع)—A person who employs an artisan to make a thing (Art. 124).
- Mustebdi'* (مستبضع)—A person who uses another's capital for the benefit of the other (Art. 1059).
- Muste'jer* (مستأجر)—A thing given for hire (Art. 411).
- Muste'jir* (مستأجر)—A person who hires (Art. 410).
- Muste'jir fih* (مستأجر فيه)—Property given to a hired person to work on (Art. 412).
- Musterzi'* (مسترضع)—The hiring of a wet nurse (Art. 418).
- Mustevda'* (مستودع)—A person who accepts another's property for safe keeping (Art. 764).
- Mutaqarribe* (مقاربه)—See 'Adediat Mutaqarribe (Art. 147).
- Mutaqavvim* (مقوم)—See Mal Mutaqavvim (Art. 127).
- Mutebayi'an* (متبايعان)—The buyer and seller (Art. 162).
- Mutefavite* (مفاوته)—See 'Adediat Mutefavite (Art. 148).
- Mutesebbib* (متسبب)—A person causing consequential damage (Art. 888).
- Muteveli* (متولى)—The trustee of a vaqf.
- Muvekkil* (موكل)—Principal (Art. 1449).
- Muvekkil bih* (موكل به)—That for which an agent is appointed (Art. 1449).
- Muzara'a* (مزارعه)—A partnership to cultivate land (Art. 1431).
- Nafaqa* (نفقه)—Necessaries and maintenance (Art. 1054).
- Nafiz* (نافذ)—See Bey' Nafiz (Art. 113). (Arts. 374, 365, 366, 375, 378).
- Naqd* (نقد)—Gold and silver money (Art. 130).



*Naql Sarih* (نقل صريح)—A precept clearly true on one of the four following authorities :

1. The Quran.
2. The traditions of Mahommed.
3. The judgments of the four Imams the Successors of Mahommed.
4. The judgments of the Khalifs of the first century of the Hegira, and of the founders of the various sects.

*Nogsan arz* (نقصان ارض)—Loss to land by cultivation (Art. 886).

*Nuqud* (نقود)—Plural of Naqd (Art. 130).

*Qabul* (قبول)—Acceptance (Art. 102).

*Qabil qismet* (قابل قسمت)—Capable of partition (Art. 1131).

*Qadi* (قاضى)—A Judge.

*Qadim* (قديم)—Ab antiquo (Art. 166).

*Qaiman qimet* (قائماً قيمت)—Standing value of buildings or trees (Art. 882).

*Qanat* (قنات)—An underground water channel (Art. 1049).

*Qaza* (قضا)—Judgment. The duties of a judge (Art. 1786).

*Qiza-i-ilzam* (قضاء الزام)—Judgment against the defendant (Art. 1786)

*Qaza i-istihqaq* (قضاء استحقاق)—Judgment against the defendant (Art. 1786).

*Qaza-i-terk* (قضاء ترك)—Judgment against the plaintiff (Art. 1786).

*Qiyas* (قياس)—Measuring, comparing, legal analogy (Red-house).

*Qimet* (قيمت)—The true value of a thing (Art. 154).

*Qismet* (قسمت)—Partition (Art. 1046).

*Qismet-i-ferd* (قسمت فرد)—Partition of a single thing (Art. 1115).

*Qismet-i-jem'* (قسمت جميع)—Partition of many things (Art. 1115).

*Qismet-i-tefriq* (قسمت تفریق)—Partition by separation (Art. 1115).

*Qiyemi* (قيمی)—A thing which cannot be matched in the markets (Art. 146).

*Rahin* (راهن)—Pledgor. (Art. 703).

*Ra'is el mal* (رأس المال)—The capital of a business (Art. 1057).

*Reb'l mal* (رب المال)—The owner of the capital in a mudarebe (Art. 1404).

*Rehn* (رهن)—A pledge. To pledge (Art. 701).



- Rehn musta'ar* (رهن مستعار)—To borrow with leave to pledge (Art. 726).
- Resul* (رسول)—Messenger (Art. 1450).
- Reshid* (رشيد)—A person who looks after his affairs (Art. 947).
- Rib-h* (ربح)—Profit from work (Art. 1058).
- Risalet* (رسالت)—To take a message (Art. 1450).
- Rukn el bey* (ركن البيع)—Essence of a bey (Art. 149).
- Sadaqa* (صدقه)—Alms (Art. 835).
- Sagir ghayr mumuyyiz* (صغير غير مميّز)—A young person without understanding (Art. 943).
- Sagir mumuyyiz* (صغير مميّز)—A young with understanding (Art. 943).
- Sahih* (صحيح)—Sound, healthy, lawful (Art. 108) (Redhouse).
- Sani* (صانع)—An artisan (Art. 124).
- Sarf* (صرف)—To exchange money (Art. 121).
- Satarim*—1st person singular of the aorist of *satmak* to sell.
- Sefih* (سفيه)—A prodigal person. A foolish person (Art. 946).
- Selem* (سلم)—To buy by payment in advance (Art. 123).
- Semen* (ثمن)—Price of a thing sold (Art. 152).
- Semen musemma* (ثمن مسمّى)—The price agreed (Art. 153).
- Sened* (سند)—Proof, title-deed, voucher.
- Sevm nazr* (سوم نظر)—Delivery for purchase at a fixed price (Art. 299).
- Sevm shira* (سوم شرا)—Delivery for inspection or to shew (Art. 298).
- Shahadat* (شهادات)—To give evidence (Art. 1684).
- Shahid* (شاهد)—A witness (Art. 1684).
- Shefi* (شفيع)—A person with right of pre-emption (Art. 951).
- Sher* (شرع)—The Law of God (Redhouse) (Art. 1).
- Sherr* (شر)—Evil, harm, injury, wickedness (Redhouse).
- Shirket* (شركت)—Joint ownership, partnership (Art. 1045).
- Shirket a'mal* (شركت اعمال)—Partnership to work (Art. 1332).
- Shirket Aqd* (شركت عقد)—Partnership (Art. 1329).
- Shirket Ayn* (شركت عين)—Joint ownership of corporeal property (Art. 1067).
- Shirket deyn* (شركت دين)—Joint ownership of debts (Art. 1068).
- Shirket ebdan* (شركت ابدان)—Partnership to work (Art. 1332).
- Shirket emwal* (شركت اموال)—Partnership with common capital (Art. 1332).
- Shirket Ibaha* (شركت اباحه)—Public right to unowned thing (Art. 1045).



- Shirket-i-mulk* (شرکت ملک)—Joint ownership (Art. 1045).
- Shirket'inan* (شرکت عنان)—Partnership on unequal terms (Art. 1331).
- Shirket Mudarebe* (شرکت مضاربة)—Partnership in which one finds capital and the other labour (Art. 1404).
- Shirket mufaveza* (شرکت مفاوضه)—Partnership on equal terms (Art. 1331).
- Shirket sana'i* (شرکت صنائع)—Partnership to labour (Art. 1332).
- Shirket taqabbul* (شرکت تقبل)—Partnership to labour (Art. 1332).
- Shirket vujuh* (شرکت وجوه)—Partnership to trade on credit (Art. 1332).
- Shufa* (شفعة)—Pre-emption (Art. 950).
- Shurb* (شرب)—The right to water animals and crops (Art. 1262).
- Shurb khas* (شرب خاص)—Right to take from private water (Art. 955).
- Sulh* (صلح)—Compromise (Art. 1531).
- Tagrir* (تغریر)—To cheat (Art. 164).
- Tahaluf* (تحالف)—To swear both parties (Art. 1682).
- Tahjir* (تحجیر)—To mark the boundaries of land (Art. 1052).
- Tahkim* (تحکیم)—To appoint an arbitrator (Art. 1790).
- Tahkim hal* (تحکیم حال)—To give judgment for what exists (Art. 1683).
- Tahlif* (تحلیف)—To swear one party (Art. 1681).
- Taleb khusumet ve temelluk* (طلب خصومت و تملک)—Third claim of pre-emption (Art. 1031).
- Taleb muwasebe* (طلب مواثبه)—First claim of pre-emption (Art. 1029).
- Taleb taqrir ve ish-had* (طلب تقریر و اشدهاد)—Second claim of pre-emption (Art. 1030).
- Taqabbul* (تقبل)—To undertake work (Art. 1055).
- Taqaddum* (تقدم)—To call attention to an injury (Art. 889).
- Taqsit* (تقسیت)—Giving time for payment by instalments (Art. 157).
- Tassaruf* (تصرف)—To use and dispose of a thing at will (Redhouse).
- Tarik khas* (طریق خاص)—A blind alley (Art. 956).
- Teb'an* (تبعاً)—Adverb from Tib' (تبع) A follower, consequence, inseparable accompaniment (Redhouse).
- Teberru'* (تبرع)—A giving from pious motives. To give gratuitously (Redhouse).



- Tereke* (ترکه)—The property left by a deceased person. It includes his movables and mulk immovables. (Achilleus Christidou about klerodosia and epitropeia, p. 92).
- Tejil* (تأجيل)—To give time to pay a debt (Art. 156).
- Tenagus* (تناقص)—Estoppel (Art. 1615).
- Tassaruf*—See Tassaruf.
- Tevatur* (تواتر)—Evidence of many people (Art. 1677).
- Tesebbiben ilaf* (تسبباً ائلاف)—To destroy indirectly (Art. 888).
- Tevliet* (تولیت)—The office of Muteveli.
- Ujret* (اجرت)—Hire (Art. 404).
- Uzr* (عذر)—A defect, impediment, excuse (Redhouse).
- Vahib* (واهب)—Donor (Art. 833).
- Vali* (والی)—The Governor of a province or vilayet.
- Vaqf* (وقف)—A thing dedicated. A dedicating.
- Veqqfieh* (وقفیه)—The Sher' judgment containing the terms of a dedication.
- Variss* (وارث)—Heir (Art. 1599).
- Vasfan* (وصفاً)—From vasf "to describe" (Art. 108).
- Vedi* (ودیع)—A person accepting property to keep (Art. 764).
- Vedi'a* (ودیعه)—Property deposited for safe keeping (Art. 763).
- Vekyalet* (وکالت)—To appoint an agent (Art. 1449).
- Vekyl* (وکیل)—An agent (Art. 1449).
- Vekyl musakhar* (وکیل مسخر)—A vekyl to represent an absent defendant (Art. 1791).
- Vezny* (وزنی)—A thing which is weighed (Art. 134).
- Vilayet* (ولایت)—A Turkish province.
- Zaman* (زمان)—Compensation (Art. 416).
- Zarar* (ضرر)—Includes deterioration and destruction (Qamus Dict.).
- Zarar fahish* (ضرر فاحش)—Excessive damage (Arts. 1199, 1201).
- Zaruret* (ضرورت)—Need, want, necessity, poverty (Redhouse).
- Zatan* (ذاتاً)—Essentially, originally, personally (Redhouse).
- Zer'y* (ذرعی)—A thing measured by the arshun (Art. 136).
- Ziliet* (ذی الید)—A person in possession (Art. 1679).
- Zira* (ذراع)—A cubit varying in length in different trades from 21 to 29 inches (Redhouse) also called arshin or arshun.



# COPY OF THE IMPERIAL AUTOGRAPH COMMANDS

*Be it done in accordance with them*

Destour,  
p. 30.

## PREFACE

*Contains two parts*

## PART I

Is concerning the definition and divisions of the 'Ilm Fiq-h (science of the Canon Law).

1. 'Ilm Fiq-h is to know the practical propositions of the Sher'.

'Ilm Fiq-h,  
meaning of.

The propositions of the practical part of the Sher' refer either to matters of the future life, and these are the provisions of the law which relate to the ceremonial part of religion (Ibadat), or they refer to matters of the present life, and these are divided into the parts—marriage, dealings between people and their relations with and conduct towards one another (Mu'amelat) and punishments.

In this way, God decreed the continuation of this world until the appointed time, and this depends on the perpetuation of the human race and the perpetuation of the human race depends on the marriage of men and women for procreation and succession.

And moreover, the race is preserved by men not being cut off.

But man, by reason of the weakness of his nature, for his preservation, has need of industrial works for food, clothing and habitation, and this depends on the existence of co-operation and combination between the individuals.

In a word, man, by reason of his being of a social nature, is not able to live alone, like other animals and has need of mutual assistance, and joint action, by a high civilization.

But by reason of the fact that every person asks for what is easy for himself, and is annoyed with that which gives trouble, for the preservation from decay of justice and order among them, men need many strong Sher' laws in the matters of marriage, and in matters of co-operation and participation, which are the basis of civilised life.



The first part of these laws is the part of the Fiq-h about marriage, the second part is the part about dealings with one another (Mu'amelat).

And for the purpose of making civilization, in this way, permanent, it is necessary to make criminal laws, and this is the punishment part of the Fiq-h.

A commencement was made for the writing of this Mejjelle by collecting, from books of repute, the propositions of the part concerning dealings between people (Mu'amelat), which are of frequent application, for the purpose of arranging them in books, and the books in chapters, and the chapters in sections.

Now the branch propositions, which will be in force in the Law Courts, are the propositions, which will be related in sections and chapters hereinafter.

But lawyers, who have studied the Fiq-h, have converted the propositions of the Fiq-h into a number of universal rules, every one of which, while it embraces and contains many propositions, is taken as evidence for the proof of these propositions being from the admitted truths in the Sacred Law books.

And, in the first place, the understanding of these rules gives familiarity with the propositions, and is a means of fixing the propositions in the mind.

Therefore, there have been collected ninety-nine rules of the Fiq-h, and they have been brought forward to form the second part of the preface as set out below, before commencing that which is the object of our work.

And although on some of these being taken alone, there are, perhaps, found some exceptions to them, by reason of their being attached and bound the one to the other, in respect of the whole there is no defect in their universality.

[Note. 'Ilmi Sher' is the knowledge of the Sacred Law. 'Ilmi Sher' is divided into 'Ilmi Kelam and 'Ilmi Fiq-h.

'Ilmi Kelam is the part of the Sacred Law which deals with the foundations of the Mussulman Faith.

'Ilmi Fiq-h is the part of the Sacred Law which deals :

- (1) with the ceremonial part of religion ('Ibadat),
- (2) with worldly matters.

It appears from the above article that 'Ilmi Fiq-h so far as it deals with worldly matters is divided into three parts :

- (1) marriage (Munakiahat),
- (2) dealings between people and their relations with and conduct towards one another (Mu'amelat), and



## (3) punishments ('Uqubat).

It will also be seen from the above article that the Mejlle deals with the second sub-division of the law relating to worldly matters, viz., Mu'amelat.]

## PART II

*Sets out certain rules from the Fiq-h.*

2. A judgment is in accordance with what the object of an act may be.

An act is judged by its object.

That is to say, if a judgment shall be given about an act, it will be in accordance with what the object of an act may be.

COMPARE.—*Actus non facit reum Nisi mens sit rea.*

3. In contracts, attention is given to the objects and meaning, and not to the words and form.

Contracts construed according to the intention.

Therefore, in the case of a Bey' Bil Vefa (mortgage) it has the effect of Rehn (Pledge).

COMPARE.—*Qui hoeret in litera hoeret in cortice, and In conventionibus contraventium voluntas potius quam verba spectari placet.*

4. With doubt certitude does not fade.

Burden of proof.

COMPARE.—*Stabit proesumptio donec probetur in contrarium.*

[Note. from the Mira'at Mejlle.

Under this rule there are many rules. From this comes the principle of the remaining of a thing as it is. And there are many rules derived from it.

*For example.*—If Zeyd has to receive from Amr 1,000 pieces and Amr proves that he has paid the sum or that it has been acquitted. And then Zeyd proved that he has to receive 1,000 pieces from Amr. This is not accepted unless it is proved that it took place after the payment or acquittal (Ashbah)].

5. The remaining of a thing in the state in which it was found is the presumption (Asl=original).

Presumption against change.

6. What is from time immemorial will be kept in its ancient state. (See Art. 1224).

Prescription.

7. Damage does not become of time immemorial. (See Arts. 1209, 1214).

Destour, p. 32.

8. Freedom from indebtedness is to be presumed.

Presumption against indebtedness.

Therefore, when someone wastes the property of another, if they have a difference as to the amount, what the person, who committed the waste, says, is taken as right, and the owner of the property has need of proving the excess of his claim.



Presumption  
as to  
accidental  
qualities.

9. As to attributes which may exist or not, the presumption, which there is, is that they do not exist.

*For example.*—In a Mudarebe partnership, if there is a dispute as to whether there be profit or not, because its non-existence is the presumption, the statement of the Mudarib is taken to be correct, the owner of the partnership property has need of evidence that there was profit.

Presumption  
of continu-  
ance of thing  
proved to  
exist once.

10. When a thing is proved for one time, judgment will be given in favour of its continuance until there is proof to the contrary.

Therefore, if a thing's being at one time the property of someone is proved, as long as there is no state of things destructive of the ownership, judgment will be given in favour of the continuance of the ownership.

Presumption  
as to time of  
occurrence.

11. The reference of an event of recent occurrence to a time near that in which the reference is made, is the presumption.

That is to say, if a dispute arise about the cause and time and happening of a thing of recent occurrence, it is referred to a time near the present, until its relationship to a remote time is proved.

Interpreta-  
tion of  
words.

12. In the case of a word, the sense, in which it is presumed to be used, is the literal sense.

Construc-  
tion.

13. No weight is given to arguments where there is a clear statement opposed to them.

COMPARE.—*Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est.*

When law  
clear it is  
conclusive.

14. It is not permitted for lawyers to strive to arrive at the meaning of a point of law or religion, where there is a decisive text.

COMPARE.—*Absoluta, sententia expositore non eget.*

As to legal  
precedents.

15. A thing established contrary to legal analogy (Qiyas) cannot be used as an analogy for other things.

[Note from Mira'at Mejelle.

Like the evidence which the Prophet accepted from Hazimet. And he said "The evidence of Hazimet is sufficient."

This is against the rule because by the Qur'an it is said you must have two witnesses,

Also like the allowance of nine wives to the Prophet, which cannot be taken as a rule or example for others, as the Shi'i Sect did, and allowed nine wives to others.



This was allowed to the Prophet as a special honour and not allowed to others (Shar-h)].

16. By an attempt to form a correct opinion on a point of law, an attempt to form a correct opinion is not destroyed.

Finality of judgment.

[Note from Mira'at Mejelle.

Abu Bekr gave a judgment on certain questions, but Omer gave contrary judgments. Yet the judgment of Abu Bekr was not set aside. And it was explained that the second attempt to arrive at the true interpretation of the law was not stronger than the first.

Also, if a Judge refuse the evidence of a man because he does not obey the law, and afterwards the man repents and tenders the same evidence, still it is not accepted.

Some lawyers explained this by saying, that the acceptance of the evidence, after repentance, will set aside the endeavour to arrive at the truth of the law, by another.

If a man's evidence is refused for some reason and afterwards the reason ceases, still his evidence is not accepted in the same question—except in the case of boys and blind men.

Also, if a Judge give a judgment about something, and afterwards he strives to arrive at the truth in another way, his first judgment will not be set aside.

Some people excepted from this rule two questions:—

(1) The setting aside of partition made, if excessive damage is shewn. Then the attempt to arrive at the truth is set aside by another attempt.

(2) If the Imam gave an opinion about something, and afterwards died or was dismissed, the second Imam can change the opinion, because it is of public business. (Ashbah).]

17. Hardship (Meshaqqat) causes the giving of facility.

That is to say, difficulty becomes a cause of facility, and in time of embarrassment it becomes necessary that latitude should be shewn.

Equitable relief from the law.

Very many legal rights allowed by the Canon Law, such as loans, hawale and interdict are branches from this origin, and the indulgencies and reliefs shewn by the jurists in matters of Sher' Law are deduced from this rule.

18. Where a matter is narrow it becomes wide.

That is to say, so far as hardship (Meshaqqat) is experienced in a business, latitude and indulgence are shewn.

Equitable relief.



As to torts.

19. Damage (Zarar) and retaliation by damage is not allowed.

COMPARE.—*Injuria non excusat injuriam.*

20. Damage (Zarar) is put an end to.

[Note. Damage means legal damage. See 3, C. L. R. 105, 136.]

Necessity an excuse.

21. Necessities (Zarurat) make forbidden things canonically harmless.

COMPARE.—*Necessitas inducit privilegium quoad jura privata. Lex non cogit ad impossibilia.*

22. Necessities (Zarurat) are estimated according to their quantity. (See Art. 1202).

COMPARE.—*Necessitas quod cogit, defendit.*

Cessation of excuse.

23. A thing permitted on account of an excuse (Uzr) becomes unlawful on the cessation of the excuse.

COMPARE.—*Cessante ratione legis, cessat ipsa lex.*

Cessation of prohibition.

24. When the prohibition has faded away, the forbidden thing returns.

Damage.

25. A damage (Zarar) cannot be put an end to by its like. (See Art. 1312).

Private damage preferred to public.

26. To repel a public damage (Zarar) a private damage is preferred. The prohibition of an unskilful doctor is a branch from this rule.

COMPARE.—*Salus populi suprema lex. Lex citius tolerare vult privatum damnum quam publicum malum.* See Art. 1323.

Light Damage to prevent severe damage.

27. Severe damage (Zarar) is made to disappear by a lighter damage.

[Note from the Mira'at Mejelle.

From this the obligation to perform religious duties, and to provide things necessary for the support of relations (Nafaqa).

From this also the imprisonment of the father, if he refused to support his son.

Secus—as to debts.

From this also, if a hen swallows a pearl, attention will be paid as to which is more valuable, and the owner of the more valuable will pay the value of the less (Ashbah).] See Arts. 1224, 902.

The less of two wrongful acts to be chosen.

28. When two wrongful acts (Fesad) meet, the remedy of the greater is sought by the doing of the less.

[Example from the Mira'at Mejelle.



A man is wounded, and his wound bleeds if he prostrates himself in the act of prayer, he can then nod with his head and pray sitting, because the omission to prostrate himself is a lighter wrong than to pray unclean (Ashbah).] See Art. 902.

29. The smaller of two harms (Sherr) is chosen.

[Note from the Mira'at Mejelle.

The less of two harms chosen.

*For example.*—If a mountain fell down, with a garden upon it, in the garden of another man below it, the owner of the more valuable will pay the value of the less valuable and possess it.

The head of a bull gets into a well and cannot be taken out without breaking the one or the other. Then the owner of the more valuable will pay the value of the other and possess it.] See Art. 902.

30. The repelling of mischief (Mufasid) is preferred to the acquisition of benefits.

[Note from Mira'at Mejelle.

Repelling mischief preferred to benefit.

*For example.*—If a woman is bound to perform ablution, but could not find a place secluded from men, she can put off her ablution to another time.

Also, a man is allowed to do what he likes in his own Mulk property, if he does not cause damage to others.]

31. Damage (Zarar) is repelled as far as possible.

Damage repelled.

32. Whether a want (Hajet) be general, or whether it be special, it is reduced to the degree of the necessity (Zarurat).

Relief of need when granted.

The legality of Bey' Bil Vefa (mortgage) is of this sort. Transactions of this sort were put in force on account of the necessity (Ihtiyaj) seen, when debt became extensive amongst the people of Bokhara.

33. Constraint (Iztirar) does not destroy the right of another.

Constraint does not destroy the right of another.

Consequently, if a man when he is hungry eat someone's bread, the payment of its value is necessary.

34. When the receiving of a thing is forbidden the giving of it is also forbidden.

Wrong to give what is wrong to receive.

[Mira'at Mejelle—Like a bribe.]

35. When it is forbidden that a thing should be done, it is also forbidden that it should be asked for.

Forbidden to ask a forbidden thing. Custom.

36. Custom is of force.

That is to say, common use and custom, whether it be general or special, is made the arbitrator for the establishment of a Sher' judgment. See Art. 1509.



Use.

37. The use of men is evidence according to which it is necessary to act.

COMPARE.—*Optimus interpret rerum usus*. See Art. 527.

Custom.

38. A thing impossible by custom is as though it were in truth impossible.

Change of law.

39. It cannot be denied that with a change of times, the requirements of the law change.

[Example from the Mira'at Mejelle.

1. Destour, p. 34.

It is permitted in our time to shut the door of the Mosque, when it is not prayer time, to avoid theft.]

Interpretation by custom.

40. Under the guidance of custom the true meaning is abandoned. See Art. 1584.

Custom when established.

41. Custom is only given effect to, when it is continuous or preponderant.

42. That is esteemed preponderant which is commonly known and not that which rarely happens.

Custom imported into contract.

43. A thing known by common usage is like a stipulation which has been made.

COMPARE.—*In contractis tacite insunt, quoe sunt moris et consuetudinis*.

Custom of merchants.

44. A thing known amongst merchants is as though fixed by stipulation between them.

Common usages like law.

45. What is directed by custom is as though directed by law. See 2, C. L. R. 140.

Obstacle given effect to.

46. When an obstacle and a want have presented themselves, the obstacle is given precedence.

Therefore, a man cannot sell to another his property, which is pledged in the hands of his creditor.

Things dependent on another

47. That which in fact follows a thing, follows it also in law.

Therefore, when a pregnant animal is sold, its young which is in its womb, is sold as dependent on it.

COMPARE.—*Partus sequitur ventrem. Accessorium non ducit sed sequitur suum principale*.

48. Judgment cannot be given separately for a thing that follows another.

Therefore, the young of an animal, which is in its belly, cannot be sold separately.



49. A person, who is owner of a thing is owner also of things which are indispensable for that thing.

Things indispensable for a thing pass with it.

Therefore a person who takes a house by purchase is owner also of the road that leads to it.

COMPARE.—*Ubi aliquid conceditur, conceditur et id sine quo res ipsa non potest.*

50. When the trunk has failed, the branch fails too.

[Note from Mira'at Mejelle.

The branch fails with the trunk.

If the principal debtor is acquitted the guarantor is acquitted too, but not *vice versa*.

But the branch may stand even if the trunk does not stand.

E.g. If someone says "Zaid has to receive from Omar 1,000 pieces and I am guarantor," and Omar denies the debt, the guarantor is bound by what he said, if Zaid claims the 1,000 pieces.]

COMPARE.—*Quum principalis causa non consistit, ne ea quidem quoe sequuntur locum habent.*

51. A thing which fails does not return.

That is to say, that which goes does not come back. See Arts.

873, 1227, 1558, 1562.

[Note. from Mira'at Mejelle.

If the heir assent to a will which disposes of more than one-third, he cannot go back from it.]

A right given up cannot be reclaimed.

52. When a thing has become null and void, a thing, which is comprised in it, becomes null and void also. See Art. 1566.

COMPARE.—*Sublato principali, tollitur adjunctum.*

53. When the giving of the original thing has not been possible, its price is given.

When a thing becomes void, what is included in it becomes void. Damages.

54. A thing which is not lawful in itself may be lawful as a consequence.

*For example.*—If the buyer make the seller his Vekyl to receive the thing sold, it is not lawful. But if he gives a sack to the seller, in order that he may measure the corn bought and put it in it, and the seller puts the corn in the sack, there is a receiving by implication and as a consequence.

What is not lawful in itself may be lawful as a consequence.

55. A thing not permitted in the beginning may be permitted in its continuance.

*For example.*—It is not lawful to make a gift of an undivided share, but if some-one entitled claims an undivided share of a property that has been given the gift does not become void, and the remaining share is the property of the donee.

What may not be done may be permitted to remain.



Continuance  
is easier than  
beginning.

COMPARE.—*Quod fieri non debet, factum valet.*

56. Continuing is easier than beginning.

[Note from Mira'at Mejelle.

If Zaid gives a house to Amr, and afterwards takes back half, and the house becomes jointly owned by them, the coming into existence of the joint ownership, does not prevent the continuation of the gift.]

1. Destour,  
p. 35. Gift  
requires  
delivery.

57. A transfer of property without consideration (Teberru) is complete only on receipt.

For example.—If a man give (Hibe) a thing to someone, before delivery, the gift is not complete.

Government  
authority of.

58. The exercise of control over Rayahs, that is to say, over subjects, depends on what is right to be done.

[Note from Mira'at Mejelle.

A Sultan cannot acquit a murderer who has no natural guardian, but he must either punish him or the parties must be reconciled.

Ibn Rustum says that the Vali can give part of a road to someone to build on, if it will not be injurious to the Moslem, but he cannot do so, if it is injurious.

But only the Khalifa or the Sultan can take the Mulk property of a man to make a road of it.]

COMPARE.—*Non potest rex gratiam facere cum injuria et damno aliorum.*

Special  
guardianship  
stronger  
than general

59. A special guardianship is stronger than a general guardianship.

For example.—The guardianship of the Muteveli of a Vaqf is stronger than the guardianship of the Qadi.

Interpreta-  
tion.

60. It is preferred that effect should be given to a word rather than that no effect should be given to it.

Therefore, as long as it is possible for a word to have a meaning, it must not be regarded as meaningless, that is to say, without effect.

Interpreta-  
tion.

61. Where the true meaning is impossible, it takes effect in a metaphorical sense.

Interpreta-  
tion.

62. If it is impossible to give effect to a word it is made of no effect.

That is to say, if it is impossible for the word to bear either the true or a metaphorical meaning, in that case, it is regarded as having no effect, that is to say, as without meaning.

Interpreta-  
tion.

63. To make mention of a part of a thing which cannot be divided is like mentioning the whole thing.



64. The unconditional runs with unconditional effect, unless by law or by indication there is proof of its having a restricted effect.

Construction.

65. The description which is given while the thing is present is of no account, but the description given in the absence of the thing is to be considered.

Representation.

For example.—When a seller who is about to sell a grey horse, the horse being present at the meeting where the contract of sale is made, says: I sell this brown horse for so many piastres, his offer is held good and the word "brown" has no effect.

But if he sells a grey horse when it cannot be seen, calling it a brown horse, the sale is not complete by reason of his having made a representation which is held in consideration.

66. A question is considered to have been repeated in the answer.

Question repeated in answer.

That is to say, whatever may have been said in a question, which has been answered in the affirmative, it is the same as if the person who answered had said it.

67. To a man who keeps silence no word is imputed, but where there is necessity shewn, silence is a declaration.

Silence, effect of.

That is to say, it is not said of someone who keeps silence that he said such a thing, but where there is reason why he shall speak, his keeping silence is regarded as an admission and a declaration. (See 4, C. L. R., 17).

68. In matters which do not appear, evidence of the thing stands in the place of that thing.

Proof of things not seen.

That is to say, in hidden matters, about which it is hard to ascertain the truth, judgment is formed by the apparent evidence about them.

COMPARE.—*Acta exteriora indicant interiora secreta.*

69. Correspondence by writing is like talking to one another.

1. Destour, p. 36. Correspondence Evidence.

70. The well known signs of a dumb man are like an explanation by speech.

71. In every case the word of an interpreter is accepted.

Interpreter.

72. To a conjecture of which the error is apparent, no attention is paid.

Mistake of fact.

[Note from Mira'at Mejelle.

If a man has thought that he owed a debt, and afterwards the



contrary is proved, he is entitled to recover back the money he has paid (Ashbeh).

In the Hulasseh it is said: "If the father of a young girl, who is not entitled to maintenance from her husband, applies to the Judge for maintenance. And the husband thinks that it is his duty and appoints a sum for her maintenance, it is of no value and the supposition is of no effect."

In the commentary by Ibn Shibne on Sherih el vehbaneyeh it is said: "If a man pays something he is not bound to pay, he can take it back, unless it is given as a gift, and the payee has spent the money."

In the Hanie. — A man said to another man: "You owe me 1,000 coins." The other said: "If you swear that I owe you that, I will pay you." The first took an oath and the second paid it to him. Can he take it back afterwards?

It is said in the Muntaqa: "If he paid it him on the condition above mentioned, he is entitled to take it back."]

**Evidence.**

73. There is no proof with a probability resting on good grounds.

Therefore, in a case where someone confesses that he owes so many piastres to one of his heirs, if he is in his death sickness, so far as the other heirs do not confirm it, this confession of his is no proof, because the probability of his filching away property from the other heirs is based on his death sickness. But his confession, made in a state of health, is held good, and by reason of the probability in that case being a mere kind of imagining without foundation in fact, there is no impediment to the proof of the confession.

[Note from Mira'at Mejelle.

There is no proof where there is a difference, as when the witnesses differ, because the number of witnesses is not complete.]

**Evidence.**

74. To imagination without foundation in fact, no weight is given.

[Note from Mira'at Mejelle.

In the Mejma il Fetawa in the books of Wassaya the question is asked: "If Zeyd has a wall belonging to him dividing his house from the house of his neighbour, and Zeyd wishes to make an opening, in the upper part of the wall, to make a ventilator above the height of a man, so that it cannot overlook the woman's apartments, can he do that?" The answer is "Yes".



It is said: "If a man appeared out of a house with a knife in his hand, he being stained with blood, moving fast, and with symptoms of fear and on this people entered the house, and found a man slain, and there is no one else except the man who went out of the house, the man will be taken by this evidence, because no one doubts that he is the murderer. Because the supposition that someone else has killed the man and jumped over the wall, or, that he himself committed suicide, is a remote chance, and cannot be taken into consideration, because there is no proof of it. (Zenqike el Hamidi)].

75. A thing established by evidence is as though it were established by actually seeing it. Evidence.

76. Evidence is for the person who claims, the oath for the person who denies. See Arts. 1815—1820. Procedure.

77. Evidence is for the proof of what is not clear, an oath is for the confirmation of what is presumed. Procedure.

78. Evidence is proof which has a transitive effect, and an admission is a proof which is restricted in its effect. See Art. 1642. Evidence, effect of.

79. By his admission one is condemned. See Art. 1587. Admission.  
2, C. L. R., 153.

80. With contradiction proof does not stand, but it does not injure the judgment given against the contradiction. Evidence, contradiction.

*For example.*—When witnesses contradict themselves by going back from their statement, their evidence does not become proof. But if the Qadi has already decided upon their former evidence, this decision cannot be annulled, and the person against whom it has been given must be indemnified by the witnesses. See Art. 1729.

81. In some cases there is proof of the branch where there is no proof of the root. Evidence.

*For example.*—If someone says: "Such a person owes to such a person so much money, I also become his guarantor" and upon the principal denying the debt the creditor sues, the payment of the said sum by the surety is required.

82. With the performance of the condition the performance of the thing which is dependent on it becomes necessary. Conditions.

[Note from Mira'at Mejelle.

If a man says to his wife, "if you enter the house of such a one you are not my wife," if she enters the house, and goes before the Qadi, and says "I am no longer his wife because there was such a condition and it is fulfilled," she is divorced].



## BOOK I

1. Destour,  
p. 38.

*Is about sales (Buyu') and is divided into a preface and seven chapters. (See note to Art. 403.)*

## THE PREFACE

Definitions.

*Explains the meaning of technical terms relating to Buyu' (Arts. 105 and 120).*

Ijab.

101. "Ijab" (proposal) is the word first spoken for making a disposition of property (Tassarruf) and the disposition (Tassarruf) is proved by it.

Qabul.

102. "Qabul" (acceptance) is the word spoken in the second place for the making of a disposition of property, and the agreement (Aqd) becomes complete by it.

Aqd.

103. "Aqd" (concluded bargain) is the two parties taking upon themselves and undertaking to do something. It is composed of the combination of an offer (Ijab) and an acceptance (Qabul).

In'iqad.

104. "In'iqad" (the making of Aqd) is the connecting, in a legal manner, the offer (Ijab) and acceptance (Qabul), the one with the other, in a way which will be clear evidence of their being mutually connected.

Bey'.

105. "Bey'" (plu. Buyu') is to change property for property, and it is either Mun'qid (by a concluded bargain) or Ghayr Mun'qid (not by concluded bargain).

Bey' Mun'-  
qid.

106. "Bey' Mun'qid" means a Bey' in which there is In'iqad (sec. 104) and is divided into Sahih (sec. 108) and Fasid (sec. 109) and Nafiz (sec. 113) and Mevquf (sec. 111). See Art. 369.

Bey' Ghayr  
mun'qid  
Bey' Sahih.

107. "Bey' Ghayr Mun'qid" is a Bey' Batil (Art. 110).

108. "Bey' Sahih" that is to say, a lawful (ja'iz) Bey', is a Bey' which in its substance (Zatan) and attributes (Vasfan) is according to Sher' Law.

Bey' Fasid.

109. "Bey' Fasid" is a Bey' which while it is good (Sahih) in its foundation (Assl) is unlawful in its attributes (Vasfan) that is to say, while it is in itself (Zatan) a concluded contract it is not according to Sher' Law (Meshru') on taking into consideration some of the attributes outside it. See Arts. 364, 371, 372, 373.

1. Destour,  
p. 39. Bey'  
Batil.

110. "Bey' Batil" is a "Bey'" which is not good (Sahih) in its foundation (Assl). See Arts. 362, 363, 370.



111. "Bey' Mevquf" is a "Bey'" which is dependent on the right of another, like a "Bey'" by a person who has no title (Fuzuly). See Art. 377. **Bey' Mevquf.**
112. "Fuzuly" is someone making a disposition of property for another without the sanction of the Sher' Law. See Arts. 368, 378. **Fuzuly.**
113. "Bey' Nafiz" is a "Bey'" not depending on the rights of another, and which are divided into the sorts irrevocable (Lazim) and revocable (Ghayr Lazim). See Arts. 365, 374. **Bey' Nafiz.**
114. "Bey' Lazim" is a "Bey' Nafiz" (Art. 113) without any option. See Arts. 367, 375. **Bey' Lazim.**
115. "Bey' Ghayr Lazim" is a "Bey' Nafiz" (Art. 113) in which an option is found. See Art. 376. **Bey' Ghayr Lazim.**
116. "Khyar" means "having an option" as will be explained in a special chapter. (See Art. 300). **Khyar.**
117. "Bey' Bat" is final (Qat'i) "Bey'". **Bey' Bat.**
118. "Bey' Bil Vefa is" someone selling a property to another for so much money, on the condition of his giving it back when the price is returned. It has the effect of a lawful (Jai'z) sale from the point of view that the buyer receives benefit from the thing sold. It has the effect of a defective (Fasid) sale in the respect that the two parties are able to annul it. It has the effect of a pledge (Rehn) in the respect that the buyer cannot sell the thing sold to another. **Bey' Bil Vefa.**
119. "Bey' Bil Istighlal" is to make a Bey' Bil Vefa (Art. 118) with the condition that the seller takes the property on hire. **Bey' Bil Istighlal.**
120. Bey' is divided into four sorts also having regard to the thing transferred by the Bey'. **Bey'.**
- The first kind is the sale to another of property for the equivalent price in money, and by reason of this being the best known of Bey's, the name Bey' is given to it.
- The second kind is the change of money (Sarf, Art. 121).
- The third kind is barter (Muqayaza) Art. 122.
- The fourth kind is to buy a thing for future delivery by a present payment (Selem, Art. 123).
121. "Sarf" is to make a transfer (Bey') of money for money, and is called in Turkish "to change money." **Sarf.**
122. "Bey' Muqayaza" is to change specific property (Ayn) for specific property, that is to say, property (Mal) for property, without either of the two parties paying money. **Bey' Muqayaza.**



Because the benefit is derived from the things ('Ayn) alone and the price is the means for the mutual exchange of property.

Semen.

152. Semen is the price of the things sold, and is a thing depending on the obligation arising from the contract.

Semen  
Musemma.

153. Semen Musemma is the price which has been named and fixed by the two parties by mutual agreement, whether it is according to its true value, or less or more.

Qimet.

154. Qimet is the true value of a thing.

Musmin.

155. Musmin is a thing which has been sold for its equivalent (Muqabil) price.

Te'jil.

156. Te'jil is to suspend and postpone a debt (Deyn, Art. 158), for a fixed time.

Taqsit.

157. Taqsit is a Te'jil (Art. 156), for the payment of a debt at many fixed times.

Deyn.

158. Deyn is a thing on the debit side of an account.

*For example.*—A debt of so many piastres and so many piastres not being present and seen and a fixed quantity, before division, of a heap of corn, or of money being ready and seen standing to the debit of a person, are all of the category of "Deyn".

1. Destour,  
p. 42. 'Ayn.

159. 'Ayn is a thing which is fixed and individually perceptible.

*For example.*—A house, a horse and a chair, and a heap of corn which exists and is present, and a sum of money are all 'Ayns.

[Note. See Art. 125.]

Ba'i'.

160. Ba'i' is a person who sells property.

Mushteri.

161. Mushteri is a person who buys.

Mutebayi'-  
an.

162. Mutebayi'an means the buyer and the seller. They are also called "Aquideyn" (the contractors).

Iqale.

163. Iqale is to annul a contract and put an end to it.

Tagrir.

164. Tagrir is to cheat.

Ghabn  
Fahish.

165. Ghabn Fahish is to be deceived in respect of goods ('Aruz, Art. 131) to the extent of half a tenth, in respect of animals to the extent of one-tenth and in respect of real property to the extent of one-fifth, or to any greater amount.

[Note to Art. 165.]

While the word 'Aruz (Art. 131), is used as being the opposite to real property, animals, Mevzunat (Art. 134), and Mekillat (Art. 133), sometimes it is also used as the opposite to immovables and animals only.



In Art. 165 of the Mejlle by reason of Mevzounat and Mekyllat not being mentioned, 'Aruz here includes Mevzounat and Mekyllat. So it was determined by the Mejlle committee.]

166. Qadim is that, the beginning of which no one knows.

Qadim.

## CHAPTER I.

*Is about questions relating to the contract of sale (Bey') and contains five sections.*

### SECTION I.

*Is about the essential properties (Rukn, Art. 149) of a sale (Bey').*

167. By an offer and acceptance the sale (Bey') is complete.  
See 2, C. L. R., 5.

Bey' by offer and acceptance.

168. In a sale (Bey') the offer and acceptance are the words used for concluding a sale (Bey') by the common usage and custom of the place. And, since by them the bargaining is concluded, they are called in our language "Khayr Leshmek".

Customary words to be used.

169. For the offer and acceptance the past tense is generally used.

Past tense generally.

*For example.*—If the seller say to the buyer "I sold to you for 100 piastres," and the buyer also say "I took it" or the buyer say "I took it" and afterwards the seller say "I sold" the sale is concluded. In the first case the word "I sold" is the offer and the word "I took" is the acceptance. In the second case the word "I took" is the offer and the word "I sold" is the acceptance.

And again, if the seller in place of saying "I sold," say, "I gave it you" or "I made it your property" and the buyer, in place of "I took" say "I consented" or "I have made acceptance," the sale is concluded.

170. By the aorist tense like "Alirim and Satarim" if the present tense is meant, the sale is concluded, and if the future is meant, the sale is not completed.

Aorist tense, when sufficient.

171. A sale (Bey') is not concluded by words in the future tense, such as "I will take" "I will sell," which mean merely a promise.

1. Destour, p. 43  
Future tense, not good.

172. A sale (Bey') is also not concluded by words in the imperative tense, such as "Sell" "Buy". But a sale is concluded by an imperative which of necessity indicates the present.

Imperative when good.



*For Example.*—If the buyer say “sell this property to me for so many piastres,” and the seller say “I sold it”, the sale is not concluded. But if on the seller saying “Take it for so many piasters,” the buyer say “I have taken it,” or on the buyer saying “I have taken it”, the seller say “Take it,” or “may you enjoy the benefit of it,” the sale is concluded. Because to use the expression “Take” or “May you enjoy the benefit of it” are in the place of saying “I have sold, take.”

By writing.

173. The offer and acceptance are also made by writing, in the same way as they are made by word of mouth.

Signs of the dumb.

174. By the known signs of a dumb man a Sale (Bey') is completed.

Bey' by delivery.

175. A sale (Bey') is also concluded by an exchange being carried out, as that is evidence of that, which is the principal object of an offer and acceptance, which is the mutual agreement of the two parties.

And they call this “Bey' Ta'ati” (Bey' by delivery).

*For example.*—If, without bargaining and without a word, the buyer gives money and the baker gives him bread, the sale is concluded.

And, in like manner, if the buyer gives money and take a water-melon, and the seller keeps silence, again the sale (bey') is concluded.

Bey' by payment.

And, in like manner, the buyer, for the purpose of buying wheat, gives to the corn merchant five gold pieces, and says: “For how much do you sell this wheat.” And the seller says: one gold piece the kilo, and to that the buyer keeps silence, and afterwards when the buyer asks for the corn, the seller says, “I will give it to-morrow,” and no offer and acceptance takes place between them, the sale also, in this case, is concluded. So much so that if one of the following deny, the corn has gone up to one and a half gold pieces the kilo, the seller is still compelled to give it at the price of one gold piece, and on the other hand, if the price of the corn falls, the buyer cannot refuse to take it at the first price.

Bey' by part performance

In the same way if a buyer says “weigh for me for so many piasters from this part of this meat” and the butcher cuts and weighs it, the sale (Bey') is concluded and the buyer cannot refuse to take the meat.



176. In the event of fresh bargaining after the contract, changing the price, either by increasing it or diminishing it, the second contract is good.

*For example.*—After the conclusion of a contract to take property for 100 piastres, when a bargain is made again for a gold piece of 100 piastres to be taken, or 100 or 90 piastres, the second contract is good.

Destour,  
p. 44.  
Change of  
price by  
mutual  
agreement.

## SECTION II.

*About the necessity of the acceptance being in agreement with the offer.*

177. If one of two contracting parties makes an offer for something in any manner whatsoever, the other party must make his acceptance of it, so as exactly to correspond with the offer. He has no right to separate or divide either the price, or the subject-matter of the sale (Bey').

Acceptance  
must agree  
with the pro-  
posal.

*For example.*—When the seller has said to the buyer "I have sold you this linen for 100 piastres," if the buyer makes acceptance in that way, he takes the whole of the linen for a 100 piastres. He cannot take the linen or the half of it for 50 piastres.

And, in like manner, on its being said, "I have sold you these two animals for 3,000 piastres," if the buyer accepts, he takes the two of them for 3,000 piastres, but he cannot take one of the two for 1,500 piastres.

178. The agreement, by implication, of the acceptance with the offer is sufficient.

Implied  
agreement of  
offer and  
acceptance.

If on the seller saying "I have sold you this property for a 1,000 piastres", the buyer say, "I have taken it for 1,500 piastres," the sale is concluded for 1,000.

If, however, at that meeting the seller accepts the increase, the payment by the buyer of the 500 piastres, which have been added, becomes necessary.

And, in like manner, if, on the buyer saying "I have taken this property at 1,000 piastres," the seller say, "I have given it for 800 piastres," the sale is completed and the deduction of the 200 piastres is necessary.

179. If one of the contracting parties go into the details of the prices of a lot of things, and make a proposal for the sale by one single sale alone, that is to say, a sale in the lump, the

Offer to sell  
in a lump.



other contracting party, on accepting in that way, can take the whole of the things sold for the whole price.

If he do not, he has not the option to split up the lump bargain, and take and accept, for the price named, one of the things in it, which he wishes.

1. Destour.  
p. 45.

*For example.*—If the seller says, "These two animals for 3,000 piastres I have sold, this one is 1,000 piastres and the other is 2,000 piastres, or "each of them is 1,500 piastres," the buyer can take the two of them for 3,000 piastres.

If he do not, he cannot take the one of the two which he wants at the price named for it.

And, in the like manner, if the seller says "I have sold you these three pieces of linen at 100 piastres a piece," and the buyer say "I have accepted one piece at a 100 piastres" or "I have accepted two pieces at 200 piastres," a sale is not concluded.

Offer to sell  
a number of  
things separately.

180. In case one of the contracting parties gives in detail the prices of a number of things, and makes a proposal to sell them separately, and the other accepts to buy what he wishes of those things at the price named, the sale is concluded.

*For example.*—If a seller name in detail the prices of a number of things, and say of them, one by one, "I have sold it" and repeating his words, say "this one for 1,000 piastres" I have sold and "that for 2,000 piastres I have sold", the buyer can accept, and buy one of the two things at the price fixed.

### SECTION III.

*About the Mejliß Bey' (meeting for bargaining).*

Mejliß Bey',  
what it is.

181. The Mejliß Bey' is the meeting for bargaining.

Offer open  
till the end of  
the meeting  
subject to  
Arts. 183-  
185.

182. At the meeting for bargaining, after the offer, until the end of the meeting, both parties have an option.

*For example.*—If one of the contracting parties, at the meeting for making the bargain, make a proposal for sale, saying, "I have sold" or "I have bought this property for so many piastres," when the other does not say immediately afterwards "I have bought" or "I have sold", and after the passing of an interval of time and at that meeting, make acceptance, the sale (Bey') is concluded. However, much the meeting is drawn out at a great length, and the interval between the offer and acceptance is prolonged, it does no harm.



183. After the offer and before the acceptance if one of the two parties gives an indication of dissent, whether by word or act, the offer becomes void, and there is no longer room for an acceptance.

Option ceases if either party shows sign of dissent.

*For example.*—If, after one of the contracting parties has said "I have sold" or "I have bought" either of the two parties occupies himself with another business, or with another conversation and discussion, the offer becomes void, after that, the sale (Bey') is not concluded by an acceptance.

184. When one of the two contracting parties makes an offer, but withdraws from it before the acceptance of the other, the offer becomes void. After that the sale (Bey') is not concluded by an acceptance.

Option to accept ceases on withdrawal of the offer.

*For example.*—When a seller says "I have sold this piece of stuff for so many piastres," if he afterwards withdraws from the offer, before the buyer has said "I have accepted," the sale (Bey') is not concluded by the buyer afterwards saying "I have accepted".

1. Destour, p. 46.

185. On a new offer being made before acceptance, the first offer becomes void, and consideration is paid to the second offer.

Offer with drawn by making new offer

*For example.*—After the seller has said "I have sold this property for 100 piastres" without the buyer having said at the time "I have accepted," if the seller change his mind and says "I have sold for 120 piastres," if the buyer accepts, the first offer is not considered, and the sale is agreed at 120 piastres.

#### SECTION IV.

##### *About a sale (Bey') with a condition.*

186. A sale (Bey') with a condition, which is one of the requirements of the contract of sale, is lawful, and the condition is of force.

Condition which is a necessary part of the contract is good.

*For example.*—When the seller has sold with a condition that he is to keep the thing sold until he has obtained possession of the price, the condition does not prejudice the sale, it only declares what is required by the contract.

187. A sale (Bey') with a condition in support of a requirement of the contract is good and the condition is of force.

Condition enforcing a necessary part of sale is lawful.

*For example.*—To sell a thing with a condition, that such a thing should be given in pledge, or, that this man should give security, is lawful, and the condition is of force.



So much so that, if the buyer does not observe these conditions, the seller can annul the sale (Bey') because these conditions are in support of the payment of the price, which is a requisite part of the contract.

Customary conditions are good.

188. A sale with a condition, which is by use and custom, current in a town, that is to say, a well-known condition, is also good, and the condition is of force.

*For example.*—A sale with a condition to line a fur, to nail a lock to its place, to patch torn garments, is good. The compliance of the seller with this condition, is necessary.

Condition which benefits neither party is void.

189. A sale with a condition, which is not for the benefit of one of the contracting parties, is lawful, but the condition is bad.

*For example.*—To sell an animal with the condition not to sell it to another, or, to let it loose on the pasture, is valid, but the condition is void.

## SECTION V.

### *Rescission (Iqale) of a sale (Bey')*

1. Destour, p. 47.

Sale can be rescinded by consent.

190. The contracting parties, after the making of the contract, can rescind the sale (Bey') by consent.

Rescission is made by offer and acceptance.

191. Rescission, like a sale (Bey') is made by offer and acceptance.

*For example.*—If one of the contracting parties says "I have rescinded the sale (Bey')" or "I have annulled the sale (Bey')" and the other says "I have accepted;" or, if one says "Rescind the sale (Bey')" and the other says "I have rescinded it," the rescission is good, and the sale (Bey') is annulled.

Rescission by delivery.

192. A rescission is valid also which is by way of a delivery over to one another, the delivery standing in the place of an offer and acceptance.

There must be a meeting at which the rescission is made.

193. In rescission also as in sale (Bey'), a meeting at which the agreement is made is necessary. (See Section 3).

That is to say, it is necessary that there should be an acceptance at the meeting at which the proposal is made, otherwise, when one of the contracting parties says "I have rescinded the sale (Bey')", if the meeting is broken, without the other accepting, or of something happens which shews that one party dissents, the acceptance of the other given afterwards is of no use.



194. It is a condition that the thing sold should be in existence and in the hands of the buyer at the time of the rescission.

The thing must exist and be in possession of purchaser.

Therefore, if the thing has been destroyed the rescission is not good.

195. If some of the things have been destroyed, as regards the rest the rescission is permitted.

Rescission where part of the thing is destroyed.

*For example.*—When a seller sells land, which he owns, together with the sown crops, and, after the buyer has reaped the crop, the parties make rescission, the rescission, for the part of the price which concerns the land, is good.

196. The fact that the price (Semen) is destroyed does not prevent the validity of the rescission.

Rescission though price destroyed.

## CHAPTER II.

*It is divided into four sections, explaining questions relating to sales.*

### SECTION I.

*About the conditions and the describing of the thing sold.*

197. The existence of the thing sold is necessary. See. 4, C. L.R., 84.

The thing must exist.

198. It is necessary that the delivery of the thing sold be possible.

Delivery must be possible.

199. It is necessary that the thing sold should be Mal Mutaqavvim, (Art. 127).

Thing must be Mal Mutaqavvim.

200. It is necessary that the thing sold should be known to the buyer.

1. Destour, p. 48.

Must be known to the buyer.

201. The thing sold becomes known by a description of its qualities and state, which will distinguish it from other things.

How a thing is known.

*For example.*—If a sale is made, in the words, "so many kilos of red wheat" or "the plot of ground bounded by such and such boundaries," the thing sold is known and the sale is good.

202. If the thing sold is present at the meeting at which the sale is made, a pointing out which can be perceived is sufficient.

Where the thing is present.

*For example.*—If the seller says "I have sold you this animal" and the buyer while he sees it, accepts, the sale is good.

203. It is sufficient that the purchaser, of the thing sold, has known it himself, there is no necessity for a description in another way.

Sufficient if the buyer knows the thing.



The thing sold is that shewn at the time of the contract.

204. The thing sold becomes known by the designation made at the time of the contract.

*For example.*—If the seller says, "I have sold you this time-piece," indicating it by a perceptible sign, and the buyer accepts, it is necessary that the seller give that very time-piece.

If he does not do so, he cannot keep it and give another of that sort.

## SECTION II.

*States the things the sale of which is permitted and those of which the sale is not permitted.*

Non-existing thing.

205. The sale of a non-existing thing is invalid (Batil, Art. 110).

*For example.*—To sell a tree's fruit, which has not appeared at all, is invalid.

Fruit on a tree.

206. The sale of fruit, which is perfectly to be seen, while it is on the tree, whether it be good to eat or not, is good.

Fruit which has not appeared.

207. To sell individual things which are connected is good, that is to say, in case a quantity of fruit and flowers and leaves and vegetables, which come forth little by little and do not appear all at once, has appeared, the sale in a lump with them of those which have not yet appeared, as dependent on them, is good.

Where the thing differs in kind from that sold.

208. If the kind (Jins) of the thing sold has been declared and the thing sold proves to be of another kind, the sale is invalid, (Batil, Art. 110).

*For example.*—If the seller sell glass saying it is a diamond, the sale is void, (Batil).

Thing must be capable of delivery.

1. Destour, p. 49.

209. The sale of a thing, the delivery of which is not possible, is invalid (Batil, Art. 110).

*For example.*—The sale of a ship, lying in the sea, and which cannot be raised, and of a runaway animal, which cannot be caught and delivered, is invalid (Batil).

Thing must be a subject of property.

210. To sell a thing which cannot be accounted as property among men, or to buy property sold, for such a thing, is invalid (Batil, Art. 110).

*For example.*—To sell an unclean carcass or a man who is free, or to make a purchase of a property in exchange for them is invalid (Batil).

Thing sold must be Mal Mutaqavvim.

211. A sale of property (Mal) which is not Mutaqavvim, (Art. 127) is invalid (Batil).

212. To buy a property sold for a property (Mal) which is not Mutaqavvim (Art. 127) is bad (Fasid).



213. The sale of an unknown thing is bad, (Fasid).

Sale of unknown thing illegal.

*For Example.*—If the seller says to the buyer "I have sold you for so many piastres all the goods of which I am owner" and the buyer says "I have taken them," but the goods are unknown to the buyer, the sale is bad (Fasid).

214. A sale by the owner of his known undivided share (Hissa Shai'a, Art. 139), of real property, before division, such as a half, or a third, or a tenth, is good.

Sale of known undivided share.

215. Anyone can sell his undivided share (Hissa Shai'a, Art. 139) in a property to another without obtaining the permission of his co-owner.

Permission of co-owner unnecessary.

216. It is lawful to sell the right of passage (Haqq Murir, Arts. 142 and 1224), a right to take from running water (Haqq Shurb, Arts. 143, 955 and 1262) and the right of overflow (Haqq Mesil, Arts. 144 and 1224 as subject to (Teba'an) the land, and to sell water as subject to the water pipes.

Sale of easements and profits a-prendre.

### SECTION III.

*Is about the articles relating to the manner of sale of things.*

217. The sale (Bey') of things measured by the keyl, things which are weighed, things which are counted, and things which are measured by zira, by the keyl, weight, number and zira is good, and so also is their sale by a lump bargain.

Things weighed, measured and counted, how sold.

*For example.*—If the seller sells a heap of corn, and a shed full of chopped straw, and a heap of bricks, and a bale of merchandise by the lump, it is a good sale.

218. If one sells grain measuring it by a fixed vessel, or measure, or weighing it by a fixed stone, however great may be the size of the vessel or measure, and of however many okes and drachms the stone may be, the sale is good.

Sale of grain may be by weight or measure.

219. It is lawful to except from things sold, things of which the sale by themselves is lawful.

Things which may be sold by themselves may be excepted for a sale.

*For example.*—If the seller sells so many okes from the fruit of a tree, the remainder to remain for himself, the sale is good.

1. Destour, p. 50.  
Sale of a lot at a price for each.

220. The sale of a quantity of things is good if the price is fixed only for parts of them, or for the individual things.

*For example.*—It is a good sale, if one sells a heap of wheat, and a cargo of wood, and a flock of sheep, and a whole piece of cloth, for so many piastres the keyl, or the measure, or the oke, or for every head of sheep, or for every zira.

221. Real property, which has boundaries, is sold by the donum and the zira, and it is also sold by the boundaries named.

Real property



Quantity  
sold.

Thing weigh-  
ed, counted  
or measured,  
mistake in  
quantity  
where thing  
divisible  
without da-  
mage and  
price at a  
given rate or  
the lump.

222. For whatever quantity the contract of sale is made for that quantity only is it held good.

223. A sale (Bey') is good, when there has been sold, the whole of certain things, the quantity of which has been declared, and which is composed of things weighed and which do not suffer damage by division, or of similar things which are counted, or measured by the keyl, whether the price is named for the whole only, or whether it is named in detail for the keyl, or the number or the weight.

If the amount is right on delivery the sale (Bey') is irrevocable.

If the amount is too little, the buyer has a right of option, if he wishes the sale (Bey') is annulled, if he wishes he buys the quantity which there happens to be, for a part of the price.

If there turns out to be an excess, the surplus belongs to the seller.

*For example.*—When there is a heap of corn in a lump and the seller has sold it as being fifty keyls, for 500 piastres or if he has sold it as being fifty keyls at ten piastres the keyl, if it comes right, the sale becomes irrevocable. If forty-five keyls come from the heap, the purchaser has an option, if he wishes he sets aside the sale, if he wishes he buys the forty-five keyls for 450 piastres, and if there are fifty-five keyls, the five keyls which is surplus belongs to the seller.

And also when a basket of eggs has been sold, by saying they are a hundred in number for fifty piastres, or by saying they are a hundred in number for twenty paras a piece, if they turn out to be ninety in number on delivery, the buyer has an option if he wishes he sets aside the sale, if he wishes he takes the ninety eggs for forty-five piastres.

If they turn out to be 110 in number, the ten eggs which are the surplus belong to the seller.

Again if a barrel of oil is sold as being 100 okes, the rule is as explained.

224. When there is a sale of things which are weighed and are liable to damage by division and the quantity of the whole is declared and only the price of the whole is fixed, on delivery if there turns out to be less, the buyer has an option, if he wishes he sets aside the sale, if he wishes he buys the quantity there is, at the price fixed for the lot, and if there is more, the surplus belongs to the buyer. The seller has no option.

1. Destour,  
p. 51.  
Things  
weighed.  
Mistake as  
to quantity  
where thing  
not divisible  
without da-  
mage and  
price a lump  
price.



*For example.*—A diamond being sold for 20,000 piastres, on its being said to be five carats, if it turns out to be four and half carats, the buyer has an option, if he wishes he abandons it, if he wishes he buys that stone for 20,000 piastres. If it turns out to be five and half carats, that stone belongs to the purchaser for 20,000 piastres. As regards this the seller has no option.

225. When there is declared in detail the parts by measure of a whole, and the price of the parts, and the whole is sold, being one of those things which is weighed and not capable of being divided without damage, on delivery, whether it turn out less or whether it turn out greater, the purchaser has an option. If he wishes he sets aside the sale, and if he wishes he purchases the quantity which there turns out to be at a price calculated on that declared for the parts.

*For example.*—If a copper manqal is sold at 40 piastres an oke, it being said to be 5 okes, if it turns out to be  $4\frac{1}{2}$  or  $5\frac{1}{2}$  okes, in both cases also the buyer has an option. If he wishes he returns it. If he wishes he buys the manqal if it is  $4\frac{1}{2}$  okes for 180 piastres and if it is  $5\frac{1}{2}$  okes for 220 piastres.

226. When there is sold a quantity of a whole, which is of the sort of things measured by the zira generally, whether it be a building site, or merchandise, or other goods, and only the price of the whole is declared, or the price is given in detail for the zira, the rules are the same as the rules for those things which are weighed and cannot be divided without damage. But merchandise and things which are not damaged by being divided and cut, like cotton and broad cloth, are under the same rules as things measured by the keyl.

*For example.*—If a building site, which is sold for 1,000 piastres, as being 100 arshuns turns out to be 95 arshuns, the purchaser has an option if he wishes he returns it, and, if he wishes, he buys that building site for 1,000 piastres, and if there is more than 100 arshuns, the purchaser takes the whole of that building site for 1,000 piastres.

And again, if there is sold the whole of some fabric, having been made so as to form a complete suit of clothing, for 400 piastres, on a representation that it measures 8 arshuns, in case it turns out to be 7 arshuns, the purchaser has an option. If he wishes, he returns it, and if he wishes, he buys the whole for 400 piastres. In case there turns out to be 9 arshuns, the buyer takes the whole lot for 400 piastres.

Thing weighed and not divisible without damage, mistake as to size.

Part of a whole measured by zira—Mistake as to quantity.



Again, a building site being sold at 10 piastres the arshun, as being 100 arshuns, if it turns out to be 95 or 105 arshuns, the buyer has an option, he can abandon it, or, if there are 95 arshuns, buy it at 950 piastres, or, if there are 105 arshuns he can buy it at 1,050 piastres.

Again, if there is sold a whole piece of stuff, which has been made to form a complete suit, at 50 piastres the arshun, it being represented to be 8 arshuns, in case it turns out to be 7 or 9 arshuns, the buyer has an option. He can abandon it, or, if it be 7 arshuns, he can buy it for 350 piastres and, if it be 9 arshuns, he can buy it for 450 piastres.

But, if there be sold a whole piece of broad cloth, as being 150 ziras, for 7,500 piastres, or for 50 piastres a zira, if there turns out to be 140 ziras, the buyer has an option. If he wishes he avoids the sale, and if he wishes, he takes the 140 ziras for 7,000 piastres. If there is an excess amount, the excess belongs to the seller.

Sale of different things numbered at a lump price—Not right on delivery.

227. Where there has been a sale made in respect of things which are numbered and are different (Art. 148), and only the price of the whole has been declared, if they are right on delivery, the sale is good and irrevocable, and if there is a deficiency or an excess in both cases the sale is bad (Fasid).

*For example.*—If a flock of sheep is sold for 2,500 piastres, being represented to be 50 head, if it turns out to be 45 or 55 head on delivery the sale is bad (Fasid).

Things sold by number—Mistake as to quantity.

228. When there has been sold by quantity a whole quantity of different things which are counted (Art. 148), the price of the individual things being fixed in detail, if the number turns out right on delivery the sale becomes irrevocable, and if it turns out less than what was said, the buyer has an option, if he wishes, he abandons it, and if he wishes, he takes that quantity for its share in the price fixed, and if there turns out to be more than was said, the sale is bad (Fasid).

*For example.*—When a flock of sheep is sold at 50 piastres a head, it being represented to be 50 head, if it turns out that there are 45 head, the buyer has an option, if he wishes, he abandons it, and, if he wishes he takes the 45 sheep for 2,250 piastres, if these turns out to be 55 head, the sale is bad (Fasid).

229. In the preceding articles in the cases in which the purchaser has an option, after he has received the thing sold with knowledge that it is less than the amount sold, he has no option to rescind the sale.

1. Destour, p. 53. Option how lost.



#### SECTION IV.

*Is about things which are and are not included in a sale without being mentioned explicitly.*

230. There is included in the sale, when not mentioned, everything which by the custom of the town is comprised in the thing sold.

What is included by custom, or by the terms used.

*For example.*—In the sale of a house, the kitchen and its cellar, in the sale of an olive grove, the olive trees are included without being mentioned, because the kitchen and cellar are of the things comprised in the house and the land containing the olive trees is called an olive grove, on the other hand the land alone is not called an olive grove.

231. There is included in the sale (Bey') without being explicitly mentioned, things which are in effect part of the thing sold, that is to say, things which cannot be separated from the thing sold, having regard to the object of the purchase.

Things which cannot be separated.

*For example.*—In the sale of a lock the key is included, and in the sale of a cow bought for its milk, its sucking calf is included, without being explicitly mentioned.

232. There is included, as subject to (Teba'an) the thing sold, without being expressly mentioned at the sale (Bey') things which belong to the immovable parts of the thing sold, and joined as subject to the thing sold.

Fixtures.

*For example.*—In the sale of a house, things which are built and placed to be fixed, like locks nailed on, and fixed cupboards and a fixed divan, and roads which lead to a blind alley, or the public road, and the garden which is included in the boundaries. And in the sale of a building site or garden, there is also sold with the thing sold, although no express mention has been made in the bargain, trees planted with the intention that they should remain permanently.

233. There is not included in the sale (Bey'), so far as express mention has not been made at the time of the sale, things which are not sold with it as being by use and custom necessary parts of it, or considered as parts of the thing sold, and things which are not of those things which are inseparably joined to the thing sold, as subject to it, or of those which are included in the name of the things sold. But things which are sold as subject to the thing sold by the custom and use of the town, are included in the sale, without being expressly mentioned.

What not included.



1. Destour,  
p. 54.

*For example.*—In the sale of a house, things put to be moved, when they are not fixed, like a chair and a sofa, and a cupboard not fixed and in the sale of a vineyard or garden, the pots of the lemons and flowers, and young plants planted to be moved to another place, and, in the sale of a field, the sown crops, and in the sale of trees, fruit so far as it has not been expressly mentioned and stipulated for in the bargain, when not expressly mentioned at the sale are not included.

But in places where by use and custom they are sold together, the bit of the riding horse and the halter of the horse for burden are included in the sale without being mentioned.

234. The things included in the sale (Bey'), as subject to the thing sold, do not share in the price.

*For example.*—There is no necessity to deduct anything from the price named, if the headstalls of horses for burden are stolen.

235. There is included in the sale (Bey'), the things which are included in any general expression used at the time of the sale.

*For example.*—If the seller says "I have sold this house with all its rights," the rights of passage, of taking water and of over-flow belonging to that house are included in the sale.

236. The income and fruit produced by the things sold after the sale and before the delivery belongs to the purchaser.

*For example.*—On the sale of a garden, the vegetables and fruit produced before delivery belongs to the purchaser.

Also the young of cows which are sold, born before delivery belong to the purchaser.

### BOOK III.

*Is divided into two sections setting out the precepts relating to the price (Sémen).*

#### SECTION I.

*It sets out the precepts classifying the conditions about and the description of the price.*

237. It is necessary that the price should be named at the time of the sale (Bey').

Therefore, if the price of the thing sold is not mentioned at the time of the sale, the sale is bad (Fasid).

238. It is necessary that the price should be known.

239. The knowledge of the price comes by a statement of its description and amount if it does not come by seeing it when it is shewn.

Things included do not share in price.

Things included in general expression.

Produce after sale and before delivery.

Price must be named at sale.

Price must be known.  
Price how known.



240. If the bargain is made by saying "so many gold coins" generally, without declaring that they are to be gold coins of the different sorts of gold coins which are current in the town, the sale is invalid (Fasid).

Silver coins also are subject to the same conditions.

241. When the bargain is made for piastres, the buyer can give any sort he wishes, provided it is not prohibited and is current.

242. In case the bargain is made, expressing the description of the price, it is necessary that payment be made from it, for whatever sort of coin the contract may be.

*For example.*—In case a contract is made which states that payment is to be made in Turkish, English or French pounds or in silver mejidies or pillar dollars, payment is made from whatever sort of coin is mentioned.

243. The money by being shewn at the time of the contract does not become the money which is to be paid.

*For example.*—If the buyer shew a Turkish pound in his hand and say "I have bought this property with this pound" and the seller says "I have sold it," the purchaser is not bound to give that very pound, since he may keep it and can give another Turkish pound like it in its place.

244. He can also give in the place of any kind of coins, coins which are fractions of them.

But in this matter it is necessary to follow the use and customs of the town.

*For example.*—If a bargain is made expressed to be for a Yiyirmilik Mejidie (a twenty piastre piece) he can give in its place onliks (ten piastre pieces) or beshliks (five piastre pieces), being fractions of a Yiyirmilik Mejidie. But at the present time, according to the use and custom existing at Constantinople, piastres and two piastres pieces cannot be given in the place of a Yiyirmilik although they are fractions of it.

## SECTION II.

*Sets forth the articles which concern sale, with a fixed term of delay for payment.*

245. A sale for a deferred payment or for payment by instalments is good.

246. It is necessary to make the time known and fixed in the case of the payment of the price being deferred, or by instalments.

247. A sale is good if it is agreed for any fixed delay for payment, which is fixed and known in the minds of the two

1. Destour, p. 55.  
Sort of coin must be named.

When price is in piastres.

Payment must be in coin mentioned.

May be in coin similar to coin shewn.

Price may be paid in coins which are fractions of those named if custom allows.

Sale for payment deferred or by instalments is good.

The time must be fixed.

Sufficient if the time is



known to the parties.  
1. Destour, p. 56.  
If time uncertain, sale is invalid.

If no time fixed, credit is one month.

Time calculated from delivery of thing.

Sale, without time for payment being fixed is for ready money unless custom otherwise.

contracting parties, such as, so many days, or months, or years, or Ruz Qasim (the day supposed to divide winter from Summer, the 26th October, o. s.)

248. A sale is bad (Fasid), if the bargain is made for payment at a time not fixed—such as—when it has rained.

249. If no time is fixed, when a sale is made on credit, the time for payment expires in one month.

250. In case the payment is deferred, or to be by instalments, the time agreed upon is calculated, from the delivery of the thing sold.

*For example.*—If the seller delivers, after the lapse of a year, merchandise which has been sold with a delay of payment for one year, his delay for one year is ascertained by counting from the time of delivery, that is to say, on the complete passing of two years from the time of the sale, the purchaser must pay the price.

251. A sale, without stipulation as to time is an agreement for ready money. But in a place where there is a use and custom to pay by known instalments or at a time known, the unconditional sale is turned into a sale for payment at that time.

*For example.*—If anyone sell a thing from the market, without saying anything about deferred payment, or present payment, it becomes necessary to pay the money at once. But if there is a use in the town to receive a fixed quantity or the whole amount of the price, at the expiration of a week, or a month, respect is paid to the custom.

#### CHAPTER IV.

*Sets out the precepts relating to the power of disposition in respect of the price and of the thing sold, after the sale. It is divided into two sections.*

##### SECTION I.

*Is about the right of disposition of the purchaser in respect of the thing sold, and of the seller in respect of the price, after the sale and before the delivery.*

252. The seller can dispose of the price of a thing sold, before he has received it.

*For example.*—A person who has made a sale can transfer, for a debt of his, the money for the property.

Transfer of price, before receipt, is legal.  
Hawale.



253. The purchaser can sell to another, before delivery, the property sold if it be immovable property. If it be movable property he cannot sell it.

Buyer can sell immovables but not movables before delivery.

## SECTION II.

*Is about the increase and decrease of the price, and of the thing sold, after the contract.*

254. The seller after the contract can increase the quantity of the thing sold and if the purchaser accept at the meeting where the increase is offered, he has a right to demand it, the repentance of the seller is of no use. The acceptance, however, of the buyer after that meeting is not regarded.

Increase of quantity sold, after the contract

*For example.*—After a bargain has been made for 20 water-melons for 20 piastres if the seller says "I have given five more" and the purchaser at that meeting accepts, he takes for 20 piastres 25 water-melons.

But when an acceptance is not given at that meeting, if the purchaser accepts afterwards, the seller cannot be compelled to give the extra number.

255. The purchaser after the contract can increase the price named. And if the seller accepts at the meeting when the increase is offered, he has a right to demand the increase, the repentance of the purchaser is of no use. But the acceptance of the seller after the meeting is not regarded.

Increase of price after contract made.

*For example.*—After a bargain has been made for an animal for 1,000 piastres, if the purchaser says "I have added 200 piastres, and increased the price," and the seller at that meeting accept, he takes that animal for 1,200 piastres. But if the seller does not accept at that meeting, and shall accept afterwards, the purchaser cannot be compelled to give the 200 piastres, the extra amount to be given.

256. The reduction of the price by the seller, made after the contract, is good and effect is given to it.

Reduction of price after contract made.

*For example.*—After a bargain has been made for a property for 100 piastres, if the seller says "I have taken off 20 piastres from it, he can take 80 piastres only in exchange for that property.

257. After the contract, an increase in the quantity of the thing sold made by the seller, and an increase in the price fixed made by the buyer, or a reduction made by the seller in the price fixed, become part of the original contract, that is to say,

Effect of increase of price, etc., on contract.



the original contract is regarded just as if it had been made on the terms of the increase or decrease.

258. When, after the contract, the seller has increased the quantity sold, the increase shares in the price fixed.

*For example.*—When eight water-melons are sold for 10 piastres, and the seller makes an addition of two water-melons, to them, and the buyer accepts, all the ten water-melons are sold for the 10 piastres. So much so that if those two water-melons are destroyed before receipt, the seller can only demand 8 piastres for the eight water-melons, by the deduction of the value of the two from the price.

Again, after a seller has sold for 10,000 piastres 1,000 Ziras of his building site, and on his adding also 100 Ziras and the purchaser having accepted, a person with a right of pre-emption appears, he can take the whole, that is to say, the 1,100 Ziras for 10,000 piastres.

259. After the contract, if the purchaser has increased the price named, the whole of the increase and of the price named is, as regards the contracting parties, the exact equivalent for the thing sold.

*For example.*—After there has been sold a Mulk immovable property for 10,000 piastres, and before receipt, on the buyer adding 500 piastres and the seller having accepted it, the price of that property becomes 10,500 piastres, so much so that, when a person having a right to the property appears, after proof and judgment, if he takes that property, the buyer can demand and receive from the seller 10,500.

But, if a person having a right of pre-emption to that property appears, because his right is dependent on the price named in the original contract, and because the addition of the extra price to the original contract, as regards the contracting parties is not able to annul his right, the person who has a right of pre-emption to that property can buy it for 10,000 piastres, the seller cannot demand from him the 500 piastres added afterwards.

260. After the completion of the sale, when the seller reduces the price, the whole of the thing sold is the equivalent for what remains of the price named.

*For example.*—After a Mulk immovable property has been purchased for 10,000 piasters, in case the seller takes off 1,000 piastres from them, that property becomes the equivalent to the 9,000 piastres.

Apportionment of price to increase.

When price is increased it is the consideration for the thing sold.

Reduced price is the consideration for the thing sold.



Therefore, if a person with a right of pre-emption comes forward, he can take it for 9,000 piasters.

261. The seller, before delivery, can remit the whole of the price of the thing sold, but it does not attach to the original contract.

Remission of price does not attach to the original contract.

*For example.*—If a seller, after he has sold a Mulk immovable property for 10,000 piastres, and before its receipt, relinquish the whole of the money, a person with right of pre-emption can take that property for 10,000 piastres, if he does not, he cannot say "I take it without payment."

## CHAPTER V.

*Sets out the precepts concerning delivery and receipt. It is divided into six sections.*

### SECTION I.

*About the meaning and manner of delivery and receipt.*

262. In a contract of sale, receipt is not a condition, but after the contract, first the purchaser pays the price to the seller, and then the seller delivers the thing to the purchaser. See 2, C. L. R., 5.

Price payable before delivery.

263. Delivery of the thing sold is effected, by the seller giving leave for the purchaser to take it in such a way, that the thing sold will be received without the purchaser being interfered with. See 2, C. L. R., 5.

Delivery, how effected

264. In the same way as delivery of the thing is made, the purchaser is considered to have received it.

Receipt by purchaser when taken.

265. With a difference of the thing sold, the manner of delivery becomes different.

Different things, different way of delivery.

266. When a purchaser is in a building site, or fields, or, in case of his seeing them from any part of them, there is delivery in the seller giving permission to take them.

Delivery of building site or field.

267. When at the time of delivery there is a sown crop on the land, the seller is bound to clear the land at the time when he feeds the animals or reaps the crops.

Obligation of seller to clear land.

268. A seller is compelled to clear a tree, by picking its fruit, at the time of delivery of a tree, having fruit upon it.

Obligation of seller to clear fruit tree.

269. The giving of permission by the seller for the buyer to pick fruit, which is sold while it is on the tree, is a delivery.

Delivery of fruit sold on a tree.

270. The saying by the seller to the purchaser "I have delivered" while they are inside enclosed immovable property, like a house, or a vineyard, is a delivery.

Delivery of enclosed immovable property.



And the saying only "I have delivered" if the purchaser is not inside the immovable property sold, if he is so near that he can immediately lock it, is a delivery.

And if he is not so near as this, the delivery is good, on the expiration of so much time, as will enable the seller to arrive there and go inside.

Delivery of locked immovable property by giving key.

Delivery of animals.

271. It is a delivery to give the key of locked immovable property.

272. The holding animals by the head, or the ear, or the headstall, is a delivery. But a permission to take possession, and a shewing of them, in a place, where it is possible to receive them without difficulty to the purchaser, is a delivery.

Delivery of things measured by the keyl or weighed.

273. There is a delivery of things measured by the keyl and of things weighed, when they are weighed or measured by the order of the purchaser, and made ready and delivered to be placed in a vessel, or receptacle.

Delivery of other articles.

274. Delivery of articles of commerce other than those weighed or measured by the keyl, and other than animals and cash, is made, by placing them in the hand of the purchaser, or near him, or by shewing them in an open place, and giving permission to take them.

Delivery of things sold in a lump and locked up.

275. When things have been sold in a lump, being inside a place which is locked, like a box or a store, leave to receive them being given, and the key of the box or store handed to the purchaser, there is delivery.

*For example.*—When wheat in a store, or books in a box are sold in a lump, the delivery of the key is considered a delivery of the thing sold.

Permission to take delivery, what is.

276. There is permission to take delivery, if the seller does not place any impediment when he looks on while the purchaser takes delivery.

Taking possession without leave, effect of.

277. A taking possession by the purchaser before paying the price, without the leave of the seller, is not considered good.

But when the purchaser has taken delivery without leave, if the thing is destroyed while in his hand, or if it is damaged, the taking of delivery is held good.

## SECTION II.

*Sets out precepts concerning the right of lien over the thing sold.*

Vendor's lien for price.

278. On a sale for cash, the seller has a right to hold and retain the thing sold until the purchaser has paid in full the price.



279. When many things have been sold by one contract, if the price has been declared for them all, one by one, the seller can retain all the things sold, until he has received the whole price.

Vendor's lien, when many things sold in one bargain.

280. The giving of a pledge, or surety, by the purchaser, cannot destroy the seller's right to retain.

Vendor's lien when security given.

281. If the buyer delivers the things sold without receiving the price, his right of retention is destroyed.

Lien lost by delivery.

In this case, the thing sold cannot be demanded back, to be held until payment of the price.

282. If the seller transfers to someone the right to take from the purchaser the price of the thing sold, the right of retention is destroyed, and, in this case, the immediate delivery of the thing sold to the purchaser is necessary.

Lien lost by transfer of claim to the price.

283. When there is a sale on credit, the seller has no right of retention. He must deliver the thing sold at once, in order that he may receive its price, when the fixed time arrives.

No lien, where sale is on credit.

284. After a sale for cash, if the seller gives a delay for the payment of the price of the thing sold, his right of retention is destroyed. And he must deliver the thing at once, in order that he may receive the price when the time comes.

Lien lost by delay for payment given after contract.

### SECTION III.

#### *Is about the place of delivery.*

285. If there is no condition in the sale, the delivery must be made at the place, where the thing is, at the time of the sale.

Place of delivery, when no condition.

*For example.*—If someone has made a sale to another at Stamboul, of corn which is at Rodosto, he makes delivery of that corn at Rodosto. On the other hand, he cannot be compelled to make delivery at Stamboul.

286. When the purchaser does not know where the thing sold is, if he is informed after the contract, there is an option.

When purchaser does not know where thing sold is.

If the purchaser wishes, the sale is annulled, and if he wishes, he takes delivery at the place, where the thing sold was, when the contract was completed.

287. When a sale is made, with a condition to make delivery at a place named, the delivery of the property at that place, is necessary.

Term as to place of delivery must be complied with.



## SECTION IV.

*Is about the making provision for the delivery, that is to say, the care and trouble and things necessary in completing it.*

Expenses of payment fall on purchaser.

288. The expenses, connected with the price, fall on the purchaser.

*For example.*—It is necessary, that the banker's expenses should be paid by the buyer, such as, the expenditure for weighing and counting the money.

Expense of delivery falls on seller.

289. The expenses, connected with the delivery of the thing sold, fall on the seller.

*For example.*—The seller must pay the cost of the measurer and weigher.

Expense of delivery of thing sold in a lump falls on buyer.

290. The providing for the delivery of things sold in a lump falls on the buyer.

*For example.*—When the grapes of a vineyard are sold in a lump, the picking of them is for account of the purchaser.

Again, when a store of wheat is sold in a lump, the cost of taking it out of the store, and removing it, is for the account of the buyer.

Removal of things from animal to house of buyer governed by custom.

291. As regards the removal to the house of the buyer, of things which have been sold, loaded on an animal, like firewood and charcoal, it is made to follow that which is the use and custom in the town.

Cost of drawing up documents and title-deeds falls on buyer. Purchaser must make declaration.

292. The cost of drawing up documents and title-deeds must be for the account of the buyer, but it is necessary also that the purchaser should bring evidence, and make a declaration of sale in Court.

## SECTION V.

*Sets out the articles providing for a thing sold which perishes.*

Loss of thing sold before delivery falls on seller.

293. If the thing sold is destroyed while in the hands of the seller, before receipt, the loss from it does not affect the buyer, it falls on the seller. See 2, C. L. R., 5.

Loss of thing sold after delivery falls on buyer.

294. If the thing sold is destroyed after delivery, the loss from it does not affect the seller, it falls on the buyer. See 2, C. L. R., 5.

Death and failure of buyer before payment and after delivery.

295. If the buyer has received the thing sold, but dies bankrupt before paying the price, the seller cannot take back the thing sold, he becomes one of the creditors in the bankruptcy.



296. If the buyer dies bankrupt before the delivery of the thing sold and the payment of the price, the seller can retain the thing sold, until the price is paid from the estate of the buyer.

Death and failure of buyer before delivery or payment.

In this case the Judge sells the thing sold, if the price is sufficient, the payment of the seller is made in full, and the surplus, if any, remains, he gives to the general body of the creditors, and if there is less than the seller should receive, after the seller has received the whole price, he takes from the estate of the buyer his deficiency, by entering the body of the creditors.

297. If the seller dies bankrupt when he has received the price, but has not delivered the thing sold, the thing sold remains as an Emanet (Art. 762), in the hands of the seller.

Death and failure of seller after payment and before delivery.

In this case the buyer takes the thing sold, and the other creditors cannot interfere. See 2, C. L. R., 5.

#### SECTION VI.

*Is about property taken with a view to sale, and property taken with a view to its being looked at, or shewn.*

298. Property received by way of "Sevm Shira," i.e., when the price is fixed and it is received by the buyer for the purpose of making a purchase, on its being lost and destroyed in the hands of the purchaser, if it is of the sort which cannot be found in the Bazaars at the same price (Qymy, Art. 146), its price, and, if it is of the sort which can be found in the Bazaars at the same price (Misly, Art. 145), a similar thing, must be given to the seller.

Liability for loss of thing taken on approval.

But, if the price is not fixed, since it is like a bailment (Emanet, Art. 762), in the hands of the purchaser, in case of its being lost or destroyed without wrong done, it is not necessary to pay compensation.

*For example.*—If the seller says "Take this animal, its price is 1,000 piastres, buy it, if you like it" and the buyer take it, taking it for the purpose of making a purchase in that way, and if the animal is destroyed in his house, it is necessary that he should pay to the seller the amount of its value. But if, when the price has not been named, the seller says "Take it and buy it if you like it" and the buyer takes it for the purpose of making a purchase, on making a bargain afterwards, if he likes it, if it is destroyed while in his hands, without any fault on his part, it is not necessary to make compensation.



Liability for loss of thing taken to be shewn or looked at.

299. Property that is received to shew or to look at, that is to say, by way of "Sevm Nazr", whether the price be declared or whether it be not declared, since it is an Emanet (Art. 762), in the hands of the receiver if it is lost or destroyed, without fault, compensation need not be made.

## CHAPTER VI.

*Is about options and is divided into seven sections.*

### SECTION I.

*Is about option given by the contract.*

Stipulation for option to rescind, is allowed.

300. It is permitted to make a condition in a sale, given to the seller or buyer, or both together, an option, within a fixed time to make valid the sale by assenting to it, or, to annul it.

Exercise of option to rescind.

301. If the party, who has been given the option by the term giving the option, in the time of the option, that is to say, within the time that he has the option, wishes, he annuls the contract, and, if he wishes, it is allowed.

Exercise of option may be by act.

302. It is annulled or sanction is given to it by acts, as well as by words.

Exercise of option by word.

303. A verbal assent, like, "I have given permission," or "I have assented" are evidence of assent, a verbal annulling of the contract, like, "I have annulled," or "I have gone back" is evidence of non-assent.

Exercise of option by act.

304. Assent by act is an act which is evidence of assent, annulling by act is an act, which is evidence of non-assent.

*For example.*—If the buyer has the right of option, his making, within the time of the option, a disposition of the property sold, in a way, which is an exercise of the rights of ownership, like letting it, or pledging it, or putting it up for sale, is an act of assent, and if the option is given to the seller, his making a disposition in that way is an act of rescission.

Expiration of time of option.

305. If the time of the option is passed, without the person, who has the option making the contract of force, or annulling it, the contract is complete.

Option does not pass to heirs.

306. A stipulation for an option does not pass to the heirs. In this case, if the seller be the person having the right of option, by his death, the buyer becomes the owner of the property.

And if the purchaser have the right of option, at his death, his heirs without any option, become owners of the thing sold.



307. In case the seller and buyer both have an option together, if either of them annuls the contract, the sale is annulled, if either of them gives his assent, only his option is gone, the other continues to have an option.

Where both seller and buyer have options.

308. If only the seller has an option, the thing sold does not pass out of his ownership, and is considered to be his own property.

Where only seller has an option, property does not pass.

And if the thing sold is destroyed in the hands of the purchaser after receipt, it is not necessary to pay the price named, the purchaser must pay its value on the day of receipt.

309. If the buyer only has an option the thing sold passes from the property of the seller, and is considered the property of the purchaser.

Where only buyer has an option, the property passes.

And if, after receipt, the thing sold is destroyed in the hands of the purchaser, the payment of the price named is necessary.

## SECTION II.

### *Is about the option for misrepresentation.*

310. When the seller has sold a property as possessed of some good quality, if that property turns out to be without that quality, the buyer has an option.

Option where thing sold does not comply with description.

If he wishes the sale is annulled, and if he wishes, he accepts the thing sold for the whole price named. This is called option on account of description (Khiyar Vaf).

*For example.*—If a cow has been sold, by saying "She is giving milk" and it is clear that she has ceased to give milk, the buyer has an option.

And, again, if a stone sold, at night, as a red ruby, turns out to be a topaz, the buyer has an option.

311. The option on account of description passes to the heirs.

Option for non-compliance with description, passes to heirs.

That is to say, on the death of a buyer, who has an option on account of description, when it is clear that the thing sold is wanting in the quality described, the heirs also have the right to annul the sale.

312. If a purchaser, who has an option on account of description makes a disposition of the thing sold, in a way which is an exercise of the rights of ownership over it, he has destroyed his option.

Loss of option for description lost by act of buyer.

N. B. as to non-compliance with sample. See Art. 325.



## SECTION III.

*Is about option on non-payment.*

Money  
option, what  
it is.

313. If the buyer and seller agree that the price shall be paid at such a time, and that if it is not paid, there is not to be any sale between them, this is a valid agreement.

This is called "money option" (*Khiyar Naqd*).

Sale annul-  
ed, for non-  
payment of  
price.

314. If the seller cannot pay the price at the fixed time, a sale which is contracted with a money option is annulled.

Sale annul-  
ed by death  
of purchaser  
who has  
option.

315. If the purchaser, who has a money option, dies within the time fixed, the sale is void.

## SECTION IV.

*Is about an option of choice (Khiyar Ta'yin).*

Option of  
choice, what  
it is.

316. To make a sale, for the seller to give which he likes, or the buyer to take which he likes, of two or three things, which are of the sort which cannot be found in the Bazaar at the same price (*Qymy*), when their prices are stated separately, is lawful. This is called option to choose.

Time must  
be fixed.

317. Where there is an option to choose it is necessary that the time be fixed.

Option must  
be exercised  
at the time  
fixed.  
Passes to  
heirs.

318. A person who has an option to choose must choose the thing taken on the expiration of the time fixed.

319. The option to choose passes to the heirs.

*For example.*—If a seller sells one of three linen stuffs of one sort, which has a best, middling and worst quality, without fixing which, for the buyer to take whichever he chooses within three or four days, and the buyer accepts in this manner, the sale is a contract. And at the expiration of the time fixed, the buyer is bound to pay the price named, and take one of them. And if he dies before choosing, his heirs are compelled to choose one of them in the same way.

## SECTION V.

*Is about option on inspection (Khiyar Ru'yet).*

Option on  
inspection  
what it is.

320. If someone purchases a property without seeing it, he has an option until he has seen it. When he has seen it, if he wishes, he annuls the purchase, if he wishes, he accepts.

This is called option on inspection.

321. Option on inspection does not pass to the heirs.

Therefore, if a purchaser dies without seeing a property he has bought, his heir is without an option, and becomes owner of the property.

Does not  
pass to  
heirs.



322. For a seller, who sells his property, without seeing it, there is no option on inspection.

*For example.*—If someone sells a property, which has passed by inheritance to himself, without seeing it, the sale is a complete contract without option.

323. In speaking of option by inspection, inspection is an expression for becoming acquainted with the situation and the condition of the thing sold, so as to make known the principal thing desired in it.

*For example.*—If the buyer sees the outside of a plain piece of cloth, which is the same inside and outside, or the stripes or flowers of a piece of cloth, which is striped or ornamented with flowers, or if he examines the udder of a sheep bought for breeding, or the back of a sheep bought for killing, or, if he tries the taste of eatables and drinkables, and afterwards makes a purchase, there is no option on inspection.

324. It is sufficient to see the sample, of the things sold by shewing a sample.

325. If the thing sold turns out worst than the sample, the buyer has an option. If he likes, he accepts, and if he likes, he goes back from the bargain.

*For example.*—When there is a purchase by sample of wheat or oil, or cotton or cloth made of one sort, and the like manufactures, if they are shewn to be below sample, the buyer has an option.

326. When there is a sale of immovable property like a khan or a house it is necessary to see all the rooms, but it is sufficient to see one room of those rooms which are all of one sort.

327. When there is a sale in lump of different things, it is necessary to see, one by one, each thing.

328. If a purchaser makes a purchase buying by lump, when he has seen some of the things and not seen others, when he sees the things which he has not seen, if he disapproves of them, he has an option. If he wishes, he takes all, and if he wishes, he returns all.

But he cannot take the things he approves of and return those he does not approve of.

329. The buying and selling of a blind man is good, but when he buys a property, whose description he does not know, he has an option.

*For example.*—If he makes a purchase of a house, the description of which he does not know, he has an option. When he has

No option on inspection for seller.

Inspection, what it is.

Sample, inspection of.

Non-compliance with sample.

Inspection of immovable property.

Inspection of things sold in a lump.

Things sold in a lump, disapproval of part.

Blind person.



ascertained its description, if he wishes, he accepts it, and if he wishes, he returns it.

Blind person, loss of option.

330. If a blind man buys when there has been a description of the thing sold, made to him before the sale, he cannot have an option.

Blind person, loss of option.

331. The option of a blind man is destroyed by tasting things, which are to be tasted, by smelling things which are to be smelt, and by taking in his hand and examining things which are known by examination.

That is to say, if he makes a purchase after smelling and examining things, which require to be smelt and examined, the sale is good and irrevocable.

Purchase subsequent to inspection.

332. If someone buys a property, which he has looked at with the intention of buying, that is to say, with the eye of a purchaser, sometime after he has seen it, and with knowledge that it is that property, there is no option on inspection.

But if there has occurred a change in that property, than he has an option.

Inspection by agent.

333. The inspection of an agent to receive, or buy a thing sold, is like the inspection of the principal.

Inspection by messenger.

334. The inspection of a messenger (Resul, Art. 1450), that is to say, of a man sent under orders only to take, and send the thing sold, does not destroy the option on inspection of the purchaser.

Loss of option by exercise of rights of ownership.

335. The dealing of the purchaser in a way, which is an exercise of the rights of ownership, destroys the option on inspection.

## SECTION VI.

### *Is about option for defect (Khiyar 'Ayb).*

Implied warranty of freedom from defect.

336. A sale, without any stipulation, makes it necessary that the thing sold should be free from defect.

That is to say, on a sale of property, without making a condition for its being free from defect, without saying free from defect, or defective, or rotten or sound, it is necessary that the property should be sound and free from defect. See 1, C.L.R., 132.



337. When it is shewn that there is an ancient defect in a thing sold without any condition, the buyer has an option. If he wishes, he returns it, if he wishes, he takes it at the price named. But if he keeps the property he cannot reduce the price on account of the defect. This is called option for defect. See 1, C. L. R., 132.

Option for defect, what it is.

338. Anything wrong, which reduces the value of property, in the opinion of persons competent to judge of that property, is called a defect.

Defect, what is.

N.B. as to grain, See Art. 353. See also Arts. 354, 355. See 1, C.L.R., 132.

339. An ancient defect is a fault, which existed in the thing sold, when it was in the hands of the seller.

Ancient defect, what is.

340. A defect coming recently into existence after the sale and before the delivery, while the thing is in the hands of the seller, is like an ancient defect, and is a ground for rescission.

Defect arising while in hands of seller.

341. If the seller, at the time of the sale, shews a defect in the thing sold, and the buyer accepts with that defect, he cannot have an option on account of that defect.

Sale with notice of defect destroys option.

342. When a seller sells a property with a condition that he is to be free from claims for all defects, there is no option for defect for the buyer. See 1, C. L. R., 132.

Sale, free from claims for defect.

343. If the purchaser buy a property, saying "It is accepted with all defects," there is no longer a right of action for defect.

Purchase with all defects.

*For example.*—If a purchaser buy an animal, saying, "It is accepted, however, blind, lame, unsound or worthless it may be," he cannot return it, on the ground that it has an old defect. See 1, C.L.R., 132.

344. If the purchaser dispose of the thing sold, in a manner, which is an exercise of the right of ownership in it, after he knows of a defect in it, he has destroyed his option for defect.

Loss of option by act of ownership.

*For example.*—If the buyer offers the thing sold for sale, after he becomes aware of an ancient defect, that is to say, if it is published to be sold, since it means that he accepts the defect, he can no longer return it.

345. If an ancient defect in the things sold appears, after a defect has recently come to it while with the purchaser, the right of the seller to return it to the purchaser no longer exists, but he has a right to demand a reduction of price.

Discovery of ancient defect after new defect has accrued.

*For example.*—If the purchaser becomes aware of an old defect in a quantity of linen cloth which he has bought, such as, its



being frayed or rotten, after he has cut it into garments, he cannot return it because there is a new defect by his cutting it into clothes. But by reason of the ancient defect he takes a reduction in the price.

Reduction  
of price how  
estimated.

346. The reduction to be made in the price is ascertained by the report of experts who are impartial. In the following way; the sound value of the thing sold and its value with the defect are correctly determined, and a deduction from the price named in the same ratio, as the difference between these two prices bears to the sound value, is the deduction to be made in the price.

*For example.*—When the buyer becomes aware of an ancient defect in a piece of linen cloth, which he has bought for 60 piastres, after he has cut it into garments, and the expert reports that the value of that piece of cloth is 60 piastres if sound, and 45 piastres with the ancient defect, the purchaser has a right to reduce the price by 15 piastres and claim and recover it.

And if they report that the sound value of that property is 80 piastres, and its value with the ancient defect 60 piastres, the difference between those two values is 20 piastres, one fourth of the 80 piastres, and the buyer can claim and recover 15 piastres, being one-fourth of the price named.

And if the skilled person report that the sound value of that piece of linen cloth is 50 piastres and its value with the defect 40 piastres, the difference between the two values being 10 piastres and one-fifth of 50, 12 piastres being one-fifth of the price named is considered to be the reduction to be made in the price.

Revival of  
option on  
removal or  
new defect.

347. If the recent defect is removed, the ancient defect becomes again a ground for returning the thing.

*For example.*—If, when an animal has been bought, an ancient defect is discovered, after it has fallen ill in the possession of the purchaser, the purchaser cannot return it to the seller, he takes a reduction in the price, but if that illness disappears, the buyer can return that animal to the seller on account of the ancient defect.

Option to  
seller to  
take back  
thing with  
new defect.

348. If, after a recent defect has come into existence while the thing is in the possession of the buyer, an ancient defect is discovered, and the seller agrees to take back the thing sold with the recent defect, if there is no impediment to the return, the buyer has no right to recover a reduction of price. Either he must take the thing sold for the full price or he must return it to the seller. So much so that if the buyer sell that property after he is aware of the ancient defect, he has no longer a right to claim a reduction



of the price.

*For example.*—In case a buyer, after he has bought a piece of cloth and cut it into shirts, has become aware that it was bad, if he sells it, he cannot demand a reduction of price from the seller. Because while the seller can say "I would have taken it back with the recent defect," that is to say, "cut up as it is" the buyer by selling it, is considered to have kept and retained it.

349. An addition, that is to say, an addition from the property of the buyer to the thing sold, prevents a return.

*For example.*—The adding of the sewing or painting of the buyer to cloth, by painting or sewing the cloth, or the planting by the buyer of a tree in land, prevent return.

350. If there is an impediment to the return, even if the seller consent he cannot take back the defective thing sold and is obliged to give a reduction in the price.

So much so that if the buyer has sold that property after he has become aware of its ancient defect, he can take a reduction of the price from the seller.

*For example.*—After a buyer has had a shirt cut and made from a quantity of linen cloth he has bought, if he becomes aware of a defect in the linen cloth, even if the seller consents, he cannot demand the return, he must give the reduction in price, and if the buyer has sold the shirt he takes from the seller the reduction in the price of the cloth. Because in this case, by reason that the seller has no right to say "I would take it back sewn and cut as it is," on account of the thread, which is the property of the buyer, being added to the thing sold, being an impediment to the return, the buyer is not held to have kept and retained it.

351. The buyer can refuse the whole before delivery, when some of the things bought at one bargain turn out to be defective, or he takes them at the price named, on the other hand there is no right to return the damaged and keep the rest.

And if it is after receipt, he can return, for their share as sound of the price named, the damaged things only, and so long as the seller does not consent, he cannot return both the damaged and sound.

But, in case damage is caused by division, he can return the whole or take the whole for the price named.

*For example.*—If one of two fezes, which have been bought for 40 piastres, turns out to be defective, before receipt, he can return both of them. And if one of them turns out to be defective

An addition by the buyer prevents a return.

Where return impossible, reduction in price is obligatory.

Refusal of whole before delivery, where part defective.

After delivery return of defective part only allowed.

Unless damage caused by separation.



after receipt, he can return one of them only, and deduct from the 40 piastres whatever number of piastres may be its sound value. But when he has bought a pair of shoes, and one turns out to be defective after receipt, he can demand back the whole money, and return both of them.

Things measured and weighed, part rotten.

352. If a person finds that part of a fixed quantity, which has been bought and received as being of one sort, which belongs to the Mekillat (Art. 133), or Mevzounat (Art. 134), kinds of things, is rotten, he has an option. If he likes, he takes the whole of it, if he likes, he returns the whole of it.

Grain, earthy what is defect.

353. In case wheat and similar grain crops turn out to be earthy, if it is considered less than the customary quantity, the sale is good and irrevocable, but if, as regards the degree, it is considered amongst men a defect, the seller has an option.

Eggs, etc., what is defect.

354. If a portion of things, of the kind of which eggs and walnuts are, turns out to be bad and rotten, if the degree of the badness does not exceed what is allowed by use and custom, such as three per cent, it is excused, and if the badness turns out to be great, such as ten per cent, it is not excused. The buyer, on returning to the seller the thing sold, can recover back the whole price.

Things in such a state that no benefit can be derived from them.

355. If the thing sold is shewn to be in such a state, that it can never be an object from which benefit can be derived, the sale is void, and the purchaser takes back the whole price.

*For example.*—If eggs, which have been bought, turn out to be so bad, that they are good for no purpose at all, the buyer recovers back his money in full.

## SECTION VII.

*Is about being deceived and fraud [Ghabn (165) and Taghrir (164)].*

Excessive deception without fraud.

356. If there is an excessive deception (Ghabn Fahish, Art. 165), without fraud (Taghrir, Art. 164), in a sale the person who is deceived cannot annul the sale.

But the sale of the property of orphans is made invalid by excessive deception (Ghabn Fahish, Art. 165), although it be without fraud.

Vaqf property, and the property of the Beit-ul-Mal, are like orphans' property.



357. When one of the parties to a sale has defrauded the other, and it has been ascertained that there has been excessive deception (Ghabn Fahish, Art. 165), the person who is deceived can annul the sale.

Fraud and excessive deception.

358. On the death of a person who has been deceived by excessive deceit (Art. 165), his action for fraud does not pass to his heirs.

Fraud, action for, does not pass to heirs.

359. If a purchaser who has been cheated, has, after it has been discovered that there has been excessive deception (Art. 165), in the sale, disposed of the thing sold, in a way which amounts to an exercise of the rights of ownership over it, his right to annul the sale no longer exists.

Loss of option by exercise of rights of ownership after discovery.

360. If a thing, which has been bought by fraud and excessive deceit, is destroyed or perishes, or if something new happens, like, in the case of a building site, a building being made on it, or a defect coming in the thing sold, the person who is deceived, has no right to rescind the sale.

Loss of option for fraud by change or destruction of thing.

## CHAPTER VII.

*Sets out the different kinds of Bey' and their effects. It is divided into six sections.*

### SECTION I.

*Is about the kinds of sales.*

361. In the making of a sale, there is a condition, that the essence of the contract (Rukn, Art. 149), should emanate from intelligent persons, that is to say, from reasonable persons, who possess judgment, and that they should attach to a subject of sale, which admits of the consequences of a sale.

Vendor and vendees must be competent persons, and the thing sold capable of being sold.

362. A sale which has a defect in its essential parts, like a sale by a mad man, is void (Batil, Art. 110).

Batil sale, what is.

363. A thing, which admits of the consequences of a sale, is a thing sold, which exists, is capable of delivery, and is Mal Mutaqavvim (Art. 127).

Thing capable of being sold.

Therefore the sale of things which are not existing, and not capable of delivery, and not Mal Mutaqavvim (Art. 127), is void (Batil, Art. 110).



Fasid sale,  
what is.

364. When there exists the condition for making a sale, if it is not according to the Sher' Law on taking into consideration some qualities outside the making of the contract of sale, such as, if the thing sold is unknown, or if there turns out to be a defect in the price, the sale is bad (Fasid, Art. 109).

Nafiz sale,  
what is.

365. In order that a sale may be Nafiz (Art. 113), it is a condition that the seller should be the owner of the property sold, or agent, or natural or appointed guardian of the owner of the property, and that there should be no right in any one else.

Fasid sale  
becomes  
Nafiz on  
delivery.

366. A sale which is bad (Fasid, Art. 109), after delivery becomes (Nafiz, Art. 113). That is to say, a disposition, made by the buyer in respect of the thing sold, is lawful.

Lazim (114)  
sale, what is  
not.

367. If there is one of the rights of option, the sale is not irrevocable.

Effect of  
sales, Fazuli,  
(Art. 112).

368. A sale which is dependent on the right of another, such as a sale by a person who has no right, and the sale of property pledged, is a completed contract, dependent on the leave of that other.

## SECTION II.

### *Is about the consequences of the sorts of sales.*

Bey'  
Mun' aqid  
(Art. 106)  
passes the  
property.

369. The consequences of a sale by completed contract (Art. 106), is ownership, that is to say, it is the ownership of the thing sold becoming the purchaser's, and the ownership of the price becoming the seller's.

A Bey'  
Batil has no  
effect.

370. A sale which is void in its essential part (Art. 110), cannot confer any beneficial consequences.

Therefore, when the purchaser under a void sale (Art. 110), has received the thing sold by the leave of the seller, since the thing sold is in consequence of its receipt an emanet in the possession of the purchaser, it is not necessary for the purchaser to make compensation if it is destroyed without his fault.

Bey'  
Fasid, effect  
of.

371. A Bey' Fasid (Art. 109), after receipt has a beneficial effect, that is to say, when the buyer has received the thing sold with the permission of the seller, he becomes owner of it.

Therefore, if a thing which has been sold by a Bey' Fasid (Art. 109), is destroyed in the hands of the purchaser, compensation is necessary.



So that if the thing sold is of the sort Misly (Art. 149), the buyer must give the seller a similar thing, if the thing sold is of the sort Qiyemi (Art. 146), the buyer must give the seller its value on the day of delivery.

372. In a Bey' Fasid (Art. 109), either party has the right to annul the sale.

Bey'  
Fasid, right  
of rescission.

But if the thing sold has perished in the hands of the purchaser, or if the purchaser destroys it or if he has got rid of it in some way as, by gift or valid sale to another, or if something has been added by the purchaser to the thing sold in some way, as, where a house has been bought, and repairs have been done, or when it is a plot of land and a tree is planted, or if it is changed in some way which will change the name of the thing sold, as, in the case of wheat, its being made flour by grinding, there is no right to annul the contract.

373. Where a Bey' Fasid (Art. 109) has been annulled, if the price has been paid, the buyer can retain the thing sold until the seller has returned the price.

Bey' Fasid,  
lien of purchaser for  
return of  
purchase  
money.

374. A Bey' Nafiz (Art. 113), gives beneficial effects at once.

Bey' Nafiz  
effect of.

375. When a Bey' Nafiz (Art. 113), is lazim (Art. 114), neither of the contracting parties can go back from it.

Bey' Nafiz  
which is  
lazim is  
irrevocable.

376. Where a Bey' is Ghayr lazim (Art. 115), the person who has the option can annul it.

Bey' Ghayr  
lazim, effect  
of.

377. A Bey' Mevquf (Art. 111), has a beneficial effect after leave has been given.

Bey' Mevquf  
effect of.

378. In a Bey' by a person who makes a transfer for another without legal right (Art. 112), if the owner of the property, or his agent, or his natural guardian or his legal guardian give permission, the Bey' is Nafiz (Art. 113). If he do not give permission, the Bey' is annulled.

Bey' by  
Fazuli,  
effect of.

But on the giving of permission, it is a condition, that the seller, and the buyer and the person who gives the permission and the thing sold be in existence. If one of these has perished, the permission is not lawful.

379. In Bey' Muqayza (Art. 122), since the two things bartered are looked upon as the price of one another, with regard to these, the conditions about things which are sold are in force.

Barter, law  
concerning.



But when there is a question about delivery, each of the contracting parties must make delivery and acceptance at the same time.

### SECTION III.

*Is about buying a thing to be delivered afterwards by a payment made in advance (Selem).*

Selem,  
how made.

380. Purchase by payment in advance, like a sale, becomes a concluded agreement by offer and acceptance.

*For example.*—If the buyer say to the seller “I have given 1,000 piastres by payment in advance for 100 keyls of wheat to be delivered afterwards,” when the seller has made acceptance, the purchase (Selem, Art. 123), becomes a complete agreement.

Selem, what  
can be sold  
by.

381. Selem (Art. 123), is good only in respect of things the quantity and quality of which, for example the best and the worst, can be fixed.

Quantity  
how ascer-  
tained.

382. The quantities of thing measured by the keyl (Art. 133), and of things which are weighed (Art. 134), and of things measured by long measure (Art. 136), are fixed by the keyl, weight and long measure.

383. The quantity of similar things which are counted (Art. 135), is fixed by the keyl and by weight as well as by counting.

Form of  
things, like  
bricks, to be  
fixed.

384. It is necessary also to fix and make known the form of such things as bricks and mud-bricks, which are counted.

Quantity  
and quality  
of things like  
cotton stuffs  
must be  
fixed.

385. Of things like cotton and woollen stuffs, which are measured by long measure (Art. 136), it is necessary to fix the length and breadth and thinness, and where and of what the work is made.

Kind, spe-  
cies, quality  
and price of  
thing sold,  
and place  
and time of  
delivery must  
be fixed.

386. In order that a Selem (Art. 123), may be good, it is a condition that there should be fixed the kind of things sold as, for instance, by saying, wheat, rice and dates, and the species, such as, wheat produced by rain or irrigation, and the quality, such as, the best or the worst, and to declare the amount of the price, and of the thing sold, and the time and place of delivery of the thing sold.

Price must  
be paid at  
the meeting.

387. In order that a Selem (Art. 123), may remain good, the payment of the price at the meeting at which the contract is made, is a condition, and if the contracting parties go away before the price is paid, the Selem is annulled.

N. B. See also Art. 389.



## SECTION IV.

*Is about the making of a contract with a skilled workman to make a thing (Istisna', - Art. 124).*

388. If someone say "make a thing of this sort for so many piastres for me", to one of the skilled persons who makes those things, and he accepts, the sale by Istisna' (Art. 124), is a concluded contract.

Istisna',  
what it is.

*For example.*—If a purchaser, shew his foot to a bootmaker and say "make me a pair of boots, for so many piastres, of such a sort of leather," and the latter accept, or, if there is a bargain with a ship's carpenter to make a ship or a boat and its length and breadth and qualities and things required are explained, the Istisna' (Art. 124), becomes a complete contract.

Likewise, if a bargain is made with a manufacturer, to make so many needle guns, to be so many piastres a piece, and their length and size and other necessary qualities are declared, the Istisna' (Art. 124), is a complete contract.

COMPARE—Art. 421.

389. Istisna' (Art. 124), is good, generally, in respect of things, the Istisna' (Art. 124), of which is customary.

Istisna'  
good, if  
customary,

But in the case of things, as regards which there is no existing custom, if a time is named, it is Selem (Art. 123), and as regards it the conditions applicable to Selem (Art. 380, etc.), are held to be in force. And if no time is named, it is again of the sort Istisna' (Art. 124).

Contract for  
work and  
materials,  
where no  
custom  
exists.

390. In Istisna' (Art. 124), a description of the thing to be made, must be given, which is in accordance with what is desired.

Thing must  
be described.

391. In Istisna' (Art. 124), it is not necessary to pay the money in advance.

Not neces-  
sary to pay  
in advance.

392. After Istisna' (Art. 124), is concluded by agreement, the parties cannot go back from the bargain.

Contract ir-  
revocable  
unless thing  
made is not  
as ordered.

But if the thing made does not agree with the description, the person who gives the order has an option.

## SECTION V.

*Is about the consequences of a sale by a person who is ill.*

393. If a sick person sell something to one of his heirs while he is in his death sickness, it is dependent on the permission of the other heirs, if, after the death of the sick person, they give

Sale to an  
heir.



permission, it takes effect, if they do not give permission, it does not take effect.

Sale to stranger for fair price.

394. If a sick person while in his death sickness sells something, for a price equal to its value, to someone, who cannot be heir to him at his death, the sale is good and is given effect to.

At price below value.

And if after giving favourable terms, that is to say, after a sale and delivery for a price less than the value of the thing, he dies, in case a third of his property is sufficient to provide for the benefit he has given, the sale again is lawful and effect is given to it, and if the third of the property is not sufficient to provide for the benefit, the purchaser is compelled to make good the reduction in the price, and if he do not make it good, the heirs can annul the sale.

*For example.*—If a sick man, who owns nothing but one house worth 1,500 piastres, before he is ill of his mortal illness, sells his house to someone, who is not his heir, for 1,000 piastres, and dies after he has sold and delivered it, since the 500 piastres, the benefit given by him, does not exceed one-third of his property, the sale is good and effect is given to it. The heirs cannot annul the sale.

And if the sick person has sold and delivered that house for 500 piastres by reason of the benefit, he has made, being 1,000 piastres, twice one-third of his property, if the heirs say to the buyer make good the price up to two-thirds of the value of the thing sold, and when they have made the demand, if the purchaser give them 500 piastres, which is the deficiency, they cannot annul the sale, and if he do not give it, they can annul the sale and claim the return of the house.

Right of creditors when sick person selling, dies insolvent.

395. In case a man has died, when he has sold his property for a price less than its value, while he was sick of the illness from which he died, and when his disposable estate was submerged with debt, his creditors can make the purchaser make good the value of the thing sold, and if he do not make it good, they can annul the sale.

## SECTION VI.

*Is about Bey' il vefa (mortgage).*

Right to redeem.

396. In Bey' il vefa, the seller by returning the price, can demand back the thing sold, and the buyer, by returning the thing sold, can demand back the price given.



397. Neither the seller nor the purchaser can sell to another a thing sold by Bey' vefa.

Mortgagor and Mortgagee cannot sell.

398. If a condition is made, that some of the benefit derived from the thing sold shall be for the good of the buyer, effect is given to the condition.

Mortgagee may take part of benefit by agreement.

*For example.*—If the buyer and seller make an agreement, by consent, to divide equally between them, the grapes of a vineyard sold by Vefa, it is necessary that it should be done in accordance with that agreement.

399. If the price of the thing sold by Vefa is equal to the debt, and it is destroyed in the hands of the buyer, the debt, which is equivalent to it, is put an end to.

Destruction of thing mortgaged—when value equals debt.

400. If the value of the thing sold by Vefa is less than the debt, and it is destroyed in the hands of the buyer, the value of the thing sold is cut off from the debt, and the buyer can claim and receive the surplus from the seller.

When value less than debt.

401. If the value of the thing sold by Vefa is greater than the debt, and it is destroyed in the hands of the buyer, there is cut off from the value and amount equivalent to the debt, and if he has done wrong, the buyer must also make compensation for the surplus, and if it is destroyed without wrong done, it is not necessary for the buyer to pay that surplus.

Where value greater than debt.

402. On the death of either of the contracting parties in Bey' Vefa, the right to annul the contract passes to the heirs.

Right to redeem passes to heirs.

403. Until a buyer, who has made a purchase by Vefa, has received what he has to receive, the other creditors of the seller cannot interfere with the property.

Mortgagee's preference over other creditors.

7. Zilhije, 1285. 9 March, 1285.

*Note :—*

(a) In this book the terms "bey'," "Buyu," "ba'i," etc., have been generally translated "sale," "sales," "seller," etc., the term "bey'," however, includes "exchange of money," "barter" and "purchase by payment in advance," (see Sec. 120), and all the provisions of Book I, which relate to "sale" apply equally to "exchange of money," "barter" and "purchase of property" by payment in advance, as far as it is possible to apply them.

(b) As to an agreement to sell. See *Shakalli v. Paulo*, 3, C.L.R., 246.

As to specific performance of contracts for sale of immovables. See Cyprus Law, XI of 1885.



As to sale of Mulk immovable property. See 28th Rejeb, 1291. Chapter II. Ongley, p. 234. 2, Nicolaides, 934. 3, Destour, 447.

As to Mortgage of Mulk immovable property. See Sec. 16 of same law.

As to sale, etc., of Arazie Miriè and Arazi Mevqufe. See 7 Ramazan, 1274. Sec. 36, etc.

8 Jemazi-ul-Akhir, 1275.

7 Shaban, 1276.

Ongley, pp. 1, 71, 88.

2, Nicolaides, 1016, 1088, 1094.

1, Destour, 165, 200, 209.

## BOOK II.

*Contains eight chapters and a preface about letting (Ijare).*

### PREFACE.

*Contains technical terms relating to letting.*

1 Destour,  
80.

"Ujret."  
"Ijar."  
"Istijar."

"Ijare".

Ijare  
Lazime.

Ijare Mun-  
jeze.

Ijare  
Muzafe.

404. "Ujret," hire paid for the use of a thing (Kira), i.e., the price for the benefit, and, "Ijar" is to give for hire, and, "Istijar" is to take on hire.

405. "Ijare" has the same meaning as Ujret in Arabic. But is used also with the meaning of "Ijar" (letting). In the technical language of the Fiq-h it is used to express the sale (Bey) of a known benefit in return for its known equivalent.

406. "Ijare Lazime" is a lawful hiring which is free from a condition giving an option, and from option for defect and from option on inspection. And this one of the parties cannot set aside without excuse.

407. "Ijare Munjeze" is a letting which is in force from the time the contract is made.

408. "Ijare Muzafe" is a letting to be in force from a fixed future date.

*For example.*—If a house be let for so many piastres for such a term, to be taken to commence from the first of such a future month, it is a contract of Ijare Muzafe.

"Ajir."

409. "Ajir" is a person who gives for hire. He is also called Mukyari and Mujir.

Muste'jir.

410. "Muste'jir" is a person who takes on hire.

Ma'jur,  
Mujer,  
Mustejer.

411. "Ma'jur" is a thing given for rent. It is also called Mujer and Mustejer.



412. "Muste'jir fi-h" is the property delivered to a hired person by the person who hires him, in order that he may do the work, which he has undertaken to do by the contract of hire. Like cotton or silk fabrics given to a tailor for the purpose of making clothes, or a load given to a porter to be transported.

Muste'jir  
fi-h.

413. "Ejir" is someone who gives himself for hire.

Ejir.

414. "Ejr Misl" is rent fixed by competent disinterested persons.

Ejr Misl.

415. "Ejr Musemma" is the rent mentioned and fixed at the time of the contract.

Ejr  
Musemma.

416. "Zaman" is to give the like of a thing, if it is a thing which can be matched, (Art. 145), or, to give the value of a thing, if it is a thing which cannot be matched (Art. 146).

417. "Mu'add lil Istighlal" is a thing designed and prepared to be let on hire. It is principally things such as horses, carriages for hire, and immovable property, like shops and baths and houses and hotels built or bought for the purpose of being let.

Mu'add lil  
Istighlal.

A thing being let for three years uninterruptedly is proof of its being Mu'add lil Istighlal. And a thing built by a person for himself becomes Mu'add lil Istighlal by information, and notice being given to people that it is Mu'add lil Istighlal.

418. "Musterzi" is someone taking a milk mother (wet nurse) for hire.

Musterzi.

419. "Muhayah" consists of a division of profits.

Muhayah.

*For example.*—Like when two persons own a house as part owners, and agree to take, the benefit in turns, one, one year, and the other, another.

## CHAPTER I.

*Is about the general rules.*

420. In letting the subject matter of the contract is the benefit from a thing (Menfa'at).

Letting,  
what it is.

421. On taking into consideration the subject matter of the contract, letting is of two kinds.

Letting, dif-  
ferent kinds  
of.

The first kind is a contract of hire being for the use of corporeal property ('Ayn), the thing hired is called "'Ayn Me'jur" and "'Ayn Mustejer," and this first sort is divided into three divisions.

The first division is letting of immovable property, like the letting of houses and land.



The second division is the letting of merchandise ('Aruz) like letting clothes and utensils.

The third division is the letting of animals.

The second kind is a contract of letting for work. In this the person who lets himself out for hire is called "Ejir"—like taking servants or labourers for hire. The hiring of artisans is also of this kind.

*For example.*—As it is "Istisna" (Art. 388), to make clothes on the condition that the cloth should come from the tailor, so it is called hire of labour to make clothes when the cloth is given to the tailor.

422. There are two sorts of hired people.

Hired persons, two kinds, special and common.

The first kind is a person specially employed, who is taken on hire to work for the hirer alone. Like a monthly servant.

The second sort is a common hireling, who is a person who is hired, and is not restricted by the condition that he is not to work for anyone other than the hirer.

*For example.*—A porter, and auctioneer and tailor, and watchmaker and a jeweller and a port boatman, and a hackney carriage driver, and a village shepherd are all common hirelings, who are not special to anyone and can work for anyone.

But when one of these is hired to work for the hirer alone, for such a time, during that time, he becomes a private hireling.

In the same way a porter, or a carriage driver or a boatman, when he is hired to be special to the hirer, and not to work for another up to such a place, is a private hireling until he arrives at that place.

Special hiring by more than one.

423. Several persons also, being regarded as a single person, can be the hirer of a special employee in the same way as one person can be.

Therefore, when the inhabitants of a village have hired a shepherd by a single contract to be special to themselves, that shepherd becomes a private employee, but in case of their having made it lawful for him to watch the animals of people other than themselves, he becomes a common employee.

Common employee, right to pay of.

424. The right of the common employee to pay arises on the work being done.

Private employee, right to pay of.

425. The right of a private servant to the wage is dependent on his being found ready for the work at the time for which he is hired, but his having actually done the work is not a condition. Yet he must not refuse to do the work. If he does, there is no right to the wage.



426. A person being entitled to a fixed benefit by a contract of hire, can claim that benefit itself, or a similar, or smaller one, but he cannot pass to what exceeds it.

Hirer of a fixed benefit, right of.

*For example.*—In a shop hired for black-smith's work, the hirer can do a craft causing damage equal to that caused by blacksmith's work or less.

And in a house hired for someone to live there, if he does not live there, if he wishes to put things there, it is lawful. But in a shop hired to be a perfumery, he cannot carry on blacksmith's work.

427. If there is a difference by a change of the person using anything, effect is given to a restriction.

Restriction as to person using the thing hired.

*For example.*—On a horse hired to be ridden by someone, persons other than that person must not ride.

428. If there is a difference by a change of the person using anything, no effect is given to a restriction. In the case of a house let to be dwelt in by someone, a person other than that person can dwell in it.

429. A person can let his undivided share to his part owner, whether it be capable of division or not. But he cannot let it to another. But he can let his turn, after division for enjoyment by turns (Muhayah).

Letting undivided share.

430. If it turns out that undivided shares exist, it does not make bad a contract of letting.

*For example.*—After someone has let his house, if an undivided half is taken by someone, who has a right to it, the letting as regards the remaining half share remains good.

Letting not bad, if lessor turns out to be undivided shareholder.

431. Two part owners, being agreed together, can let the property owned by them together, to a third person.

Part owners, letting by.

432. It is lawful to let one thing to two persons. Each one pays the amount which falls to his own share of the rent. The share of one cannot be taken from the other, so far as they have not become surety the one for the other.

Letting to two persons.

## CHAPTER II.

*Sets out questions connected with a contract of letting and contains four sections.*

### SECTION I.

*Sets out questions relating to the essential parts of a contract of letting.*

433. Like sale, letting becomes a concluded contract by a proposal and acceptance.

Letting concluded by proposal and acceptance



Form of  
proposal  
and accep-  
tance.

Past tense.

Letting by  
correspon-  
dence. By  
signs of  
dumb.

Letting by  
possession  
given.

Silence is  
consent.

Parties not  
ad idem.

New con-  
tract.

Letting to  
commence  
from a  
future date.

434. In letting, the offer and acceptance is by words used for a contract of letting, like "I have let" and "I have given for rent" and "I have taken for rent" and "I have accepted."

435. Hiring like sale becomes a concluded contract by the past tense, it does not become a concluded contract by the future tense.

*For example.*—If one say "I will let" and the other say "I have taken on hire" or if one say "Let it" and the other say "I have let it," in both cases there is no concluded contract of hire.

436. In the same way as a letting is made by word of mouth, it becomes a concluded contract by correspondence, or the well known signs of a dumb person.

437. By giving possession also a letting becomes a concluded contract.

*As for example.*—A traveller on a steamer, or a harbour boat, or a saddle horse for hire, without a bargain being made verbally, if the hire is known, must pay so much, if it is not known he must pay a fair hire.

438. In hiring silence is regarded as consent and acceptance.

*For example.*—When a man has taken a shop on hire, at a rent of 50 piastres a month, if after the expiration of some months, at the end of a month, the letter say to him, "if you consent to pay 60 piastres, stay" "if you do not consent, leave the shop," after the hirer has declined, saying "I do not consent to 60 piastres," if he continues to stay on, he must pay a rent of 50 piastres as before. And if he does not say anything, and does not leave the shop, and continues to stay there, he must pay 60 piastres a month.

Again, if the owner of the shop say 100 piastres and the hirer say 80 piastres, and the owner leaves the hirer, and he stays in the shop, it becomes necessary to pay 80 piastres.

And, if each of the parties persists in what he says and the hirer goes into occupation, a fair rent becomes necessary.

439. After the contract, if there is a new bargaining by a change, or an increase, or a reduction of the price, the second contract is given effect to.

440. A letting to be in force from a future date is good, and before the arrival of the time is irrevocable.

Therefore, one of the contracting parties alone cannot annul the letting by saying the time has not come.



441. After a contract has been completed which is a lawful letting, if another person offers additional rent, however much it may be, the lessor cannot for this alone annul the letting.

But if the guardian of an infant, or the Muteveli of a Vaqf, let their immovable property for a rent less than the equivalent rent, the letting is bad. The complete payment of the equivalent rent is necessary.

442. If the hirer becomes owner of corporeal property ('Ayn) let, in any way, such as, by gift or inheritance, the letting ceases to be of force.

443. When a valid impediment has appeared, which is an obstacle to the carrying out of the object of the contract, the letting is set aside.

*For example.*—When a cook has been hired for a marriage festival, if one of the parties, going to be married, dies, the contract of hiring is annulled.

And in the same way, if a man, who is suffering from toothache, makes a contract with a dentist to pull it out for so many piastres, and afterwards the pain goes away, the hiring is annulled.

Likewise by the death of the person, who seeks for a wet nurse, the hiring is not annulled, but by the death of the child or of the milk mother, the hiring is annulled.

## SECTION II.

### *About the conditions of making a contract of hiring and the validity of a hiring.*

444. In the making of a contract of hire, the capability of contracting persons, that is to say, that they must be of understanding and clear judgment, is a condition.

445. As in sales, so also in making a contract of hire, the agreement of the proposal with the acceptance, and the unity of the meeting for making the contract is a condition.

446. The letter who makes a contract of letting must be the absolute owner of the thing, or the agent of the owner, or his natural or legal guardian.

447. The letting of a person who has no right over a thing, becomes a concluded contract dependent on the permission of the owner, or on the permission of his natural or legal guardian, in case the letting has been for an equivalent rent, if the owner is an infant or mad (Mejnun).

Lessor cannot annul contract on offer of greater rent. Vaqf and infant's property equivalent rent.

Merger of lease.

Termination of lease, if object of contract becomes impossible.

Capacity of parties.

Agreement of proposal and acceptance—Unity of meeting. Letter, who may be.

Letting by person without right.



But as regards the validity of the permission, it is a condition that four things should remain and exist, that is so say, the contracting parties, the owner, the thing about which the contract is made, and the price of the letting, in case of its being payable from goods. (Aruz). If one of these is non-existent, the permission is not good.

### SECTION III.

*Is about the conditions of a contract for hiring being good.*

Consent

448. As regards the validity of a contract of hire, the consent of the contracting parties is a condition.

Thing designed.

449. The designation of the thing given for rent is necessary. Therefore, if a letting be made of one of two shops, without giving the choice or designating one of them, the letting is not valid.

Rent known.

450. It is a condition that the rent be known.

Use known.

451. In a contract of hire it is necessary to make known the use to which the thing hired is to be put, in such a way as to put a stop to dispute.

Use how known of house.

452. As regards things like a house, shops, and a wet nurse, the benefit is known by a statement of the time of the hiring.

Horse.

453. In the hiring of a horse, it is necessary to declare the time or distance for which he is hired, and at the same time, whether he is for carrying loads, or for riding, and who will ride him, by fixing these or by a general statement that any person the hirer wishes can ride it.

Land.

454. When land (Arazi) is taken on rent, together with the time fixed, it is necessary to say for what business it has been hired, and if it is for agriculture, to fix what will be sown, or to make it general, saying for sowing whatever the hirer wishes.

Artisan.

455. In the hiring of an artisan, the making known of the benefit is by a statement of the work, that is to say, by fixing what he will do, and how he will do it.

*For example.*—When clothes are to be dyed it is necessary to declare the colour, and to shew the clothes to the dyer, or that he should be told the coarseness and fineness of them.

Transport.

456. In the transport of things, the benefit is made known, by fixing the place where they are to be carried and by pointing out the things.



*For example.*—When it is said “you will carry this load to such and such a place,” when the thing is seen and the distance is known, the benefit also is known.

457. It is a condition that the benefit must be able to be received.

Benefit must be capable of being received.

Therefore, the letting of a horse, which has run away and is lost, is not good.

#### SECTION IV.

*Is about bad and void letting.*

458. A letting is void if one of the conditions for the making of a contract of letting (Sec. 2), is not found.

Void hiring, what is.

*For example.*—The letting and hiring of a madman and of an infant who has not discretion is void, but a letting is not annulled by the letter or hirer going mad after the contract is made.

459. When the letting is void, the rent does not become due by the use of the thing. But if the property be Vaqf or belong to an infant, the equivalent rent for the use must be paid. A madman also is like an infant.

Void letting, rent when payable.

460. If, when the conditions for the making of a contract of letting (Sec. 2) exist, one of the conditions of the contract being good (Sec. 3), is not found, the hiring is bad (Fasid).

Bad hiring, what is.

461. A bad (Fasid) letting is enforceable (Nafiz), but in a bad letting the person who lets, is entitled to the equivalent rent and not to the agreed rent.

Bad hiring is enforceable.

462. The badness (Fesad) of a hiring sometimes arises from the hire not being known, and sometimes from there not being found other conditions of the contract being good (Sec. 3).

Bad hiring—Rent what payable.

In the first case, the equivalent rent is payable in full. In the second case, the equivalent rent is payable, with the condition that it must not exceed the rent fixed.

#### CHAPTER III.

*Sets out precepts relating to the hire to be paid. It is divided into three sections.*

##### SECTION I.

*Is about the price of the letting.*

463. A thing which is good to make the consideration in a sale (Bey'), is good for the consideration in hire, and, a thing which is not a good consideration in sale (Bey'), can be good for the consideration in a contract of hire.

Consideration in a hiring.



Cash consideration.

Consideration in kind.

Where consideration in kind to be delivered.

*For example.*—It is possible to hire a garden, in exchange for the habitation of a house, or in exchange for an animal.

464. If the consideration for a letting is cash, it is known by fixing its quantity—like the price of a thing sold.

465. If the consideration (Bedel) for the letting is composed of merchandise (Aruz), or things measured (Mekilat) or things weighed (Mevzunat) or things numbered which are alike (Adediat Muteqarribe) it is necessary to declare the description as well as the quantity.

And as regards things which require expense and loading for transport, if there is a condition to deliver them anywhere, they must be delivered at that place. And in case the place of delivery has not been declared, if the thing hired is immovable property, it must be delivered at the place where the immovable property is, and if it is work, at the place where the work of the hired man is given, and if it is for loading, it must be given at the place where the hire became payable.

But as regards things not wanting expense and carriage, he takes them, where he wishes.

## SECTION II.

*Sets out precepts about the circumstances of the right of the letter to hire, and the causes which make necessary the payment of hire.*

466. Hire does not become payable by a contract, which contains no stipulation, that is to say, the payment of hire is not immediately necessary, when the contract of hire only is made.

467. By payment in advance, hire becomes irrevocable, that is to say, if the person who takes a thing on rent pays the rent in cash, and the letter becomes the owner of it, the hirer cannot afterwards demand it back.

468. If there is a condition for payment down, it becomes necessary to pay the rent, that is to say, if a condition is made for the payment of the hire in cash, whether the contract of hiring be for the use of a specific thing, or whether it be for work, it is necessary for the hirer to pay the rent at once.

And in the first case, the lessor until payment of the hire can refuse delivery of the thing let, and in the second case, the hired person until the hire is paid, can refuse to do the work.

And in both cases if the hirer refuse to pay when the lessor demands the rent in ready money, the lessor has a right to annul the letting.

Hire not payable on making contract unless stipulated.

Hire paid in advance cannot be recovered back.

Condition for immediate payment of rent.



469. By the receipt of the benefit the rent becomes payable.

*For example.*—A horse being hired to go to a place, when the person has arrived there by riding, the person who let it becomes entitled to the hire.

Hire payable on receipt of benefit.

470. In a good (Sahih), hiring, by the power to receive the benefit, the rent becomes payable.

*For example.*—After a person has received a house, which he has hired by a good (Sahih) hiring, even if he does not live in it, the rent must be paid.

In good hiring, rent is payable, if benefit could have been had.

471. In a bad (Fasid) hiring, it is not sufficient to have power to take the benefit, so far as there has not been benefit in fact, the rent is not necessary.

In bad hiring, there must be benefit in fact.

472. If without contract and permission, someone uses the property of another, if it is a thing prepared to be let on hire (Art. 417), the equivalent rent must be paid, if it is not prepared to be let on hire, it need not be paid.

Hire for use and occupation.

But if there is user, after the owner of the property has made a demand for rent, the payment of rent is necessary even if it is not a property prepared for hire.

Because in this case by the user he consents to the rent.

473. As regards the payment of rent in advance or after a delay, whatever condition the parties have made, they are bound by it.

Condition as to payment in advance or deferred.

474. In case there is a condition for a deferred payment of the hire, it becomes necessary for the lessor to make delivery of the thing hired, and for the person hired to give the work first. The payment of the hire is only necessary on the expiration of the time of payment agreed upon.

Condition for deferred payment.

475. When there is a hiring without condition for payment in advance or afterwards, whether the contract of hiring be for the use of corporeal property or whether it be for work, in every case, the delivery of the thing let by the letter, and of the work by the person hired to work, must be made first.

Where no condition as to time of payment; rent is payable after delivery.

476. If the hire is fixed for a time, by fixing the time like monthly or yearly, at the expiration of that time, the payment of the hire is necessary.

Rent monthly or yearly.

*For example.*—If the payment is monthly, it is necessary to make the payment at the end of the month, and, if it is yearly, at the end of the year.

477. As regards the obligation to pay the hire, it is a condition that the thing hired should be delivered, that is to say, the rent is considered to run from the time of delivery.

Rent runs from time of delivery.



In this case the letter, cannot take the rent for the time, before the delivery. And, if, before delivery, the time of hiring expires, he has no right to any part of the rent.

Cesser of  
rent on  
cesser  
of use.

478. If the benefit from the thing hired ceases to exist, then the rent becomes no longer payable.

*For example.*—If there is need for the repair of a bath, if it remains unused during that time, the share of the hirer for that time is not payable.

Likewise, if there is an idle time, consequent on the water of a mill being cut, the rent is considered not to be payable from the time of the cutting of the water.

But the lessee, if he has not made flour, if he has in any way used the house of that mill, he must pay that part of the sum payable for rent, which is attributable to it.

Rent does  
not cease  
because  
user unpro-  
fitable.

479. A person by alleging that, after he had rented and taken possession of a shop, there was a time when it was impossible to do business, by reason of the occurrence of a stagnation in the business for selling and buying, and that the shop remained closed, cannot refuse to pay the rent for that time.

Rent for  
use of boat  
to get to  
land after  
time expired.

480. When a boat is hired for a time, if the time expires during the voyage, a rent continues payable until she approaches the sea-shore. The hirer pays an equivalent rent for the time which is in excess.

House, use  
and occupa-  
tion where  
house is lent  
and user  
is to repair.

481. If someone give his house to another, to do the repairs and live in it without rent, and he does the repairs by himself and occupies it for a time, by reason of its being a sort of loan for use ('Ariyyet), the expense of the repairs falls on him, and the owner of the house cannot take anything from him for that time in the name of rent.

### SECTION III.

*Is about whether a person hired to do work can or cannot keep the thing, given to him to work upon, for the hire.*

Lien of  
person who  
causes a  
change by  
his work.

482. If no agreement has been made for a deferred payment of a person hired to do work, and he is a person who causes a change by his work, like a tailor, dyer or washer, there is a right to keep possession of the thing delivered to him to do the work on, for his pay.

And if, while he keeps possession in this way, that property is destroyed, he does not make compensation, but he cannot take the hire.



483. For a hired person, who does not cause any change by his work, like a porter and a sailor, there is no right to keep possession of the thing delivered to him to do the work on, for the hire.

No lien, where person hired causes no change by his work.

In this case, if the property is destroyed in his hands, when he keeps possession of it, he pays compensation. And the owner of the property has an option as to this. If he wishes he causes its value, when carried, to be made good, and pays the hire. And if he wishes he causes to be made good the loss as not carried, and does not pay the hire.

#### CHAPTER IV.

*Is about precepts relating to the time of the hiring.*

484. A person can let to another his property and mulk land for a fixed time whether it be long, like "years", or short, like a day.

Fixed time, long or short.

485. The beginning of the hiring is considered to be at the time mentioned in the contract, that is to say, from the time mentioned and fixed.

Beginning of hiring.

486. If the time of commencement is not named at the time of the contract, it is estimated from the time of the contract. (See Art. 502).

Beginning of hiring.

487. In the same way as the taking immovable property for a year, for so many piastres a month, is lawful, so it is lawful to let it for a year for so many piastres without mentioning a monthly payment.

Hiring by the year.

488. A letting, at the beginning of a month, whether it be for one month, or whether it be for more, if it is agreed to be a monthly payment, becomes an agreement in respect of a monthly term, and in this case, if the month is less than thirty days, it is necessary to pay for a whole month.

Monthly letting made at beginning of month.

489. In case it is agreed to be for the term of a month, when part of the month is passed, it is considered to be for a month of thirty days.

Letting for one month when part of month is passed.

490. If an agreement is made for so many months after part of a month is passed, the deficient first month is completed, so as to make thirty days, from the very last month, its rent being paid by a daily account, and the months in between are calculated and estimated from the first day of the lunar month.

Letting for months, when part of month is passed.



Letting by the month after part of a month is passed.

491. After part of a month has elapsed, if an agreement is made to let for so many piastres every month, without stating for how many months the agreement is made, it will be necessary that the deficient month which comes first, should be considered as thirty days, and the other months also, in that way, to be considered thirty days each.

Letting for a year made at the beginning of a month. Letting for year, after part of month is passed.

492. When a contract of hiring is made, at the beginning of a month, to be for the term of a year, the year is considered as being twelve months.

493. When a contract is made, after part of a month is passed, to be for a year, the one month is counted by days, the other eleven months are counted from the beginning of the lunar month.

Letting immovable property at so many piastres a month.

494. If immovable property is let for so many piastres every month, without stating how many months, the contract is good.

How put an end to

But, when the first month is completed, on the first day and night of the second and subsequent months, both the letter and hirer can annul the contract, but after the first day and night has passed, he cannot annul it.

And if one of the contracting parties say, during the continuance of a month "I have annulled," at the end of that month, it is annulled.

And if he says, during the continuance of the month, "I have annulled from the beginning of the coming month," it becomes annulled at the commencement of the coming month. And if he has paid down two or more months rent, neither of the parties can annul the letting for those months.

Day's work, how calculated.

495. In case someone hires a workman to do a day's work, from sunrise to Asr (prayer time two hours before sunset) or to sunset, in calculating the time of work, effect is given to that, which is the custom in the town.

Work and labour, time how fixed.

496. If a carpenter, for example, is hired for ten days' work, the days are estimated as being next to the conclusion of the contract. And if he is hired to do ten days' work in the summer, so long as it has not been declared from what month, and what day, he is to work, the contract is not good.



## CHAPTER V.

*Is about options. It contains three sections.*

## SECTION I.

*Is about a condition giving an option.*

497. As in a contract of sale, so in a contract of hiring, a stipulation giving an option is permitted, and a letting and hiring, on the condition that one of the parties or both should have an option for so many days, is allowed. Stipulation for option to rescind, is good.

498. The person who has the option, annuls the contract at the time of the option, if he wishes, and, if he wishes, he lets it go on. Option, effect of.

499. The annulling or assent is either by deed or word as was explained in Articles 302, 303 and 304. Option, how exercised.

Therefore, when the letter has an option, if he makes a disposition, in a way which is one of the attributes of ownership as regards the thing let, it is a revocation by deed.

And if the hirer has an option and makes a disposition, such as a hirer would make, there is an assent by deed.

500. Where someone has an option, if the time of the option expires, without his assenting to, or, annulling the hiring, the option ceases to exist and the hiring is irrevocable. Option, expiration of time of.

501. The time of the option is counted from the time of the contract being completed. Option time of, when it begins to run.

502. The beginning of the time of the letting, is considered to be, at the time, when the option ceases. Time of hiring runs from cesser of option.

503. If land is hired as being so many ziras or donums, if it turns out to be more or less, the letting is good, and the rent fixed must be paid. Option for deficiency in land let.

But in case of a deficiency the hirer has an option, if he wishes he can annul the hiring.

504. If land has been taken for so many piastres every donum, it is necessary that the rent be paid by calculating the donums. Rent where payable per donum.

505. An agreement of hiring which fixes the hire, subject to such a work being completed by such a time, is permitted, and the condition is observed. Hiring, where hire, is subject to a condition.

*For example.*—If someone gives cloth to a tailor to cut and make a shirt, and to complete to-day, or, if someone hires a camel from a man on the condition, that it arrives at Mecca in so



many days, the hiring is lawful. And if the person from whom the thing is hired performs the condition he takes the agreed wage. If he does not perform the condition, he takes an equivalent wage, not to exceed the fixed wage.

Hire,  
different  
rates for  
alternative  
ways of  
work or  
users.

506. A repetition of the hire to be paid in two or three different ways, as regards the work, the workman, the carriage, the distance, the place and the time, is good. And whichever way it turns out to be done, the payment of the hire for that must be given.

*For example.*—When a bargain is made for so many piastres for back stitching a thing, and so many piastres for over stitching it, in whichever way it is sewn, the payment of hire agreed for that way, becomes necessary, or, as regards a shop, when it has been agreed for so many piastres for carrying on a forge, and so many piastres for carrying on a perfumery, the hirer gives the rent agreed for whatever work he carries on.

And again, if a hiring is made for so many piastres to load iron on an animal, and so many piastres to load corn on it, whichever is loaded, the hire agreed for that, is given.

Or, when a kirajee says "I let this animal for 100 piastres to Chourlou, 200 piastres to Adrianople, and 300 piastres to Philippolis," the hirer to which place he goes, pays the hire for that.

And likewise, if the lessor say, I have let this house for 100, and that house for 200 piastres, after the lessee has accepted, whichever house he occupies, the payment of the rent agreed for that, becomes necessary.

Likewise, if someone make a bargain to give 50 piastres to a tailor if he makes a robe to-day, and 30 piastres if he makes it to-morrow, it is lawful and the condition is held good.

## SECTION II.

### *Is about option on inspection.*

507. The hirer has an option on inspection.

508. The inspection of a thing hired is like an inspection of its use.

509. If the lessee rents immovable property without seeing it he has an option on seeing it.

510. If someone takes a house, which he has seen before, for that house there is no option on inspection.

Hirer has  
option on  
inspection.

Inspection.  
hired thing,  
what it is.

Immovable  
property.

House seen  
before.



Unless a place has fallen down and changed its original form so that it will be unfit for habitation, in that case there is an option.

511. Every work, which differs in itself with a change of circumstances, for that there is an option on inspection for the person hired to do it.

Option of workman on inspection, when.

*For example*—When a bargain has been made with a tailor to make a robe, the tailor, who is going to sew, when he sees the camlet or the cloth, has an option.

512. For work, which does not change by a change of circumstances there is no option on inspection.

When no option for workman on inspection.

*For example*.—When it has been agreed for so many piastres to clean so many okes of cotton seed, there is no option on inspection for the person hired when he sees himself the cotton seed.

### SECTION III.

#### *Is about option for defect.*

513. As in sale, there is also an option for defect in hiring.

Option for defect. Defect, in hiring, what is.

514. In hiring a defect, which gives an option, is a thing which causes the putting an end to, or loss of, the intended benefit.

*For example*.—By a house being wholly destroyed and by the cutting of the water of a mill, by reason of there being a putting an end to the desired benefit, or, by the settling of the frame of the roof of a house, or the falling down of a part of a place which is detrimental to habitation, or the back of a hired horse being galled, by reason of all these causing damage to the intended use, these, as regards a contract of hiring, are defects giving a right of option. But defects which do not interfere with the use, like the mane or tail of a horse being cut, or the falling of the plaster in a house to an extent that the rain and cold do not come inside, in a hiring, are not a cause of option.

515. If there occurs a recent defect in the hired thing, before taking the benefit of it, it is as though it had existed at the time of the contract.

Recent defect before user—same as ancient defect. Option for recent defect.

516. When there is a recent defect in the hired thing, the hirer has an option. If he wishes he takes the benefit with the defect, and in that case pays the whole hire, or he sets aside the hiring.



Removal of defect before contract annulled.

Hirer must give notice of rescission unless thing destroyed.

517. If, before the hirer has annulled the hiring, the person who lets the thing puts an end to the recent defect, the right of the hirer to annul the contract does not remain. And if the person who has hired the thing wishes to take possession of it for the remainder of the time, the latter cannot prevent him.

518. If the hirer wishes to annul a hiring before the removal of a recent defect which interferes with the benefit, he can do so in the presence of the letter, but he cannot do so in his absence.

And if, in the absence of the letter, that is to say, without giving him notice, he rescinds the hiring, the rescission is not held good, and the rent of the hired thing is paid as before.

But in case of the complete destruction of the desired benefit, in the absence of the letter, he can annul it.

And whether he annuls it, or whether he does not, in accordance with what is said in Article 478, the rent cannot be enforced.

*For example.*—If part of a house falls down and damages the benefit from a house which is let, the hirer can rescind the hiring, but it is necessary that the rescission should be made in the presence of the letter. If he leaves the house without giving him notice, the payment of the rent is necessary, as if he had not left.

But if the house has altogether tumbled down, the hirer can annul the letting, without there being any necessity for the presence of the letter. And in any case the rent is not payable.

No reduction of rent for defect.

519. When a room or a wall or a house falls down, if the hirer does not annul the hiring, and continues to live in what remains of the house, no part of the rent lapses.

Option for destruction of one of two houses.

520. When someone hires for so many piastres two houses together, if one of them falls down, he can leave both of them.

Option, where house contains fewer rooms than agreed.

521. If there turns out to be fewer rooms in a house, which is hired as being of so many rooms, the hirer has an option. If he wishes he annuls the letting, and if he wishes he accepts the letting at the fixed rent. But in case he takes to the hiring, he cannot make a reduction of a part of the rent.



## CHAPTER VI.

*Declares the kinds of things let for hire and the rights in respect of them. It contains four sections.*

## SECTION I.

*Declares precepts relating to the letting of immovable property.*

522. If a hiring is made for a house or a shop, without declaring for whose occupation it is to be, it is permitted.

House may be let without stating for whose use.

523. If someone lets his house or shop when there are goods and things in it, the letting is good and the lessor must make delivery of the house by clearing the goods and things.

House let must be cleared.

524. If someone takes a plot of land without fixing what he is to sow, or making it general by saying to sow what he likes, the letting is bad (Fasid).

Land let, without fixing powers of lessor as to sowing.

But when it is fixed before the contract is annulled, and the lessor consents, it is changed to a good contract.

525. In land which has been rented for a person to sow what he likes, he can cultivate twice in the year, in the summer and winter.

Power for lessee to sow what he likes.

526. If the time of the lease expires before the seed sown is ripe, the cereal crops can remain on the land, the lessee paying an equivalent rent until the seed sown is ripe.

Lessee, rights as regards growing crops.

527. The hiring of a shop or house, without declaring for what purpose, is good. The manner of use is according to use and custom.

Hiring of house without declaring manner of use.

528. Anyone who has taken a house on rent and has not declared for what purpose it has been taken, can himself occupy it, or a person other than himself can occupy it.

Manner of user when not declared

And he can deposit his things in it. And he can do any kind of work in it, which will not cause any damage, or depreciate the building, but he cannot do any work which will damage or depreciate the building, without consent of the owner.

As regards the tying up of an animal, the use and custom of the town is observed and followed.

The rights over a shop are similar.

529. It is the duty of the lessor to put right, things, which detract from the intended benefit.

Lessor's duty as to repairs.

*For example.*—It is for the owners to clean the water channel of a mill.

Likewise, the repair and making good of the water ways and pipes of a house, and the repair of things detrimental to



habitation, and other works connected with the building must all be done by the owner. And if the owner refuses to do these things, the lessee can leave that house.

Yet if that house was in the state, at the time when he took it, and he saw it, by reason of its being said that there was a consent to the defect, he cannot rely on that, and leave the house. And if the hirer does these things himself, he cannot demand the expense from the lessor, it being regarded as a kind of gift.

Repairs  
done by  
lessee, when  
recoverable.

530. If the lessee has done repairs, with the leave of the lessor, if the repairs are connected with the improving of the house, like changing the tiles of the roof or with the preservation of it from harm coming to it, if there is no express condition that this expense is to be paid by the lessor, still the lessee takes the expense from the lessor.

And if it concerns, only the benefit of the lessee, like repairing the oven, for that, so far as there is no express condition, the lessee cannot recover from the lessor the expense of it.

Lessor rights  
of, as to new  
buildings  
and trees.

531. If the lessee make a new building on immovable property that is hired, or plant a tree on it, at the end of the lease, the lessor has an option. If he wishes he causes that building or tree to be pulled up, and if he wishes, he pays its price, whether small or little, and keeps it.

Lessee's  
duty to  
clean.

532. The removal and cleaning of dust, earth and rubbish, which has collected in the time of the lease, falls on the lessee.

Waste by  
lessee.

533. In case the lessee is devastating the property hired, the lessor, if he cannot prevent him, can annul the lease on application to the Judge.

See the law of 10 Rebi-ul-evvel, 1291, 3 Destour, 511, and 4 Destour 9, which replaces the law on contracts, 6 Shaban, 1284. 1 Leg. Ott., 50. 1 Destour 263.

See also the law of 28 Jamazi-el-evvel, 1289. 2 Nik., 961.

## SECTION II.

*Is about letting of merchandise ('Aruz.)*

Hiring of  
movables.

534. The hiring for a fixed time at a fixed price of clothes, arms, a tent and like movable property is permitted.

When hire  
payable.

535. If a person has hired clothes to go to a certain place, if he does not go to that place, and wears them in his house or does not wear them at all, the payment of the hire becomes necessary.



536. If a person has hired clothes to wear himself, he cannot let another person wear them.
537. Jewellery is like clothes.

Hirer cannot lend clothes to another.

### SECTION III.

#### *Is about the hire of animals.*

538. As the hiring of a specific animal is good, so an agreement with a jobber of animals to carry as far as a fixed place is good.

Hire of animal and contract for carriage.

539. In case a specific animal has been hired to go to such a place, if the animal gets ill on the road and stops, the hirer has an option. If he wishes, he waits until the animal gets well, and, if he wishes, he rescinds the hiring, and in that case, he pays to the letter, whatever may be the share of the agreed price for the distance to that place.

If specific animal gets ill on the road, hirer has an option.

540. In case a bargain has been made to carry a load so far as such a place, if the animal gets ill on the road and stops, the person who lets the animal, is obliged to carry that load to that place, by placing it on another animal.

Contract for carriage, illness of animal.

541. The hiring of an animal, without designating what the hiring is, is not permitted. But when it has been designated after the completion of the contract, and the hirer consents, it is permitted.

Hiring, nature of must be designated.

And also when an animal of one sort is hired, without fixing the terms of the hiring, on an existing custom, it is lawful, and is regulated absolutely by the custom.

*For example.*—When a horse has been hired to go to such a place, with the muleteer, according to the existing custom, the muleteer is compelled to take that person there by horse in the customary manner.

542. In the letting, it is not sufficient to fix a limit to the distance by naming a District, like a Sanjaq or Vilayet.

Distance how fixed.

Otherwise, if there is a custom for the name of that District to be applied to a town.

*For example.*—To hire a horse to go to Arabia or Bosnia is not permitted, and if the name of the town or village to be gone to is fixed, it is lawful. But in the case of the word "Sham," which is the name of a District, by reason of there being a custom to apply it to the town of Damascus, if a horse be hired to go as far as "Sham," it is good.



Latent  
ambiguity.

543. When a horse is hired to go to such a place, in case the name of that place is applied to two towns, to whichever of them he goes, the equivalent hire must be paid.

*For example.*—When a horse is hired to go from Stambul to Chekmejie, in case it is not expressed, whether it is big or small Ckekmejie, whichever place he has gone to, the equivalent hire according to the distance to it, is to be paid.

Duty to  
take hirer  
to his house.  
Hirer taking  
animal be-  
yond place  
fixed.

544. When a horse is hired to go to a town, it is necessary to take the hirer to his house in that town.

545. A person who has hired an animal to go to a fixed place, cannot go beyond that place, so long as the muleteer has not given permission. And if he goes beyond, until he has returned him to his owner without hurt and sound, that animal is at the risk of the hirer, and if he is destroyed either going out or coming back, compensation is necessary.

Hirer going  
to place  
other than  
that fixed.

546. When an animal is hired to go to a fixed place, the hirer cannot go to another place with that animal. And in case he goes, if the animal is destroyed he makes compensation.

*For example.*—When a hiring is made to go to Tekfur-Daghu, if the person goes to Islimyeh, and the animal is destroyed, compensation is necessary.

Choice of  
roads.

547. When a horse is hired to go to a fixed place, if several roads go there, the hirer can go, if he wishes, by whichever of the roads is a public road.

And when the owner of the animal has fixed the road to be gone, if the hirer goes by another road, in case the animal is destroyed, if this road is longer or more winding than the road fixed by the owner of the animal, compensation is necessary and if it is the same or easier no compensation is necessary.

User beyond  
time fixed.

548. A hirer cannot use a horse, hired for a fixed time, for more than that time. If he does, and the horse is destroyed while in his possession, he makes compensation.

Horse hired  
to be ridden.

549. The hiring of an animal for such a man to ride is good, and so is the hiring of it generally for the hirer to let anyone ride he wishes.

Riding horse  
must not be  
loaded.

550. A person must not put a load on an animal hired for riding. And in case he puts a load on, and the animal is destroyed, he must make compensation. But in this case hire need not be paid. (See Art. 86).

Animal to be  
ridden by  
hirer.

551. When an animal is hired for a particular person, to ride, another person must not ride on him. And in case he does



ride on him, if the animal is destroyed, compensation is necessary.

552. Where someone has hired a horse for him to let anyone ride on it he wishes, if he likes, he rides on it himself, and, if he likes, other people ride on it.

Animal hired for anyone to ride.

But whether he rides it himself or whether any other person rides it, whoever the rider may be, after that, the person intended is known and becomes a particular person, another person, must not ride it.

553. When an animal is hired for riding, if it is not determined by whom it shall be ridden, and not made general, by saying that the hirer may let anyone he likes ride it, the hiring is bad (Fasid).

Riding horse, if rider not mentioned.

But if, before it is avoided, the rider is declared and fixed, the contract changes to a good contract, and, in that case also, a person, other than the person determined, cannot ride that horse.

554. When an animal is hired to carry a load, as regards the pack saddle and the rope, and the sack, the custom at the town is considered.

Animal hired to carry a load.

555. When an animal is hired, and the quantity of the load is not fixed by declaration or marks, the quantity is based on use and custom.

Quantity of load.

556. The hirer cannot beat the animal hired without the leave of the owner. In case he strikes it, and the animal dies in consequence of it, he must make compensation.

Beating animal.

557. In case the owner has given leave to strike a hired animal, the hirer can only strike on a place usual for striking. And if he strikes it on a place other than the place usual for beating, and if the animal is killed by striking it on the head instead of on the quarter, where it should be struck, he must make compensation.

Beating animal.

558. It is permitted to ride an animal hired to carry a load.

Animal of burden may be ridden.

559. When an animal has been hired, and the quantity and kind of his load has been declared and mentioned, there can be loaded also a load of another sort, so far as it is less than the one mentioned, or equal to it as regards doing harm. But a thing cannot be loaded which in its likelihood to do harm is greater.

Load, what may be loaded.



*For example.* On an animal hired to carry five keyls of wheat, a person can carry five keyls of wheat, whether of his own, or another person's, and of whatever sort it may be, and he can also load five keyls of barley. But he cannot load five keyls of wheat on a horse hired to carry five keyls of barley.

In like way, 100 okes of iron must not be loaded on an animal, hired to take as load 100 okes of cotton.

Letter of  
animal must  
unload.

560. It is the duty of the person who lets the hired animal, to unload it.

Feeding of  
hired animal.

561. The feeding of the hired animal is the duty of the person who lets it out.

*For example.*—The forage and watering of a horse, that is hired, falls on the owner but if, without his leave, the hirer gives food to the horse, it is a gift. He cannot afterwards take the money from the owner.

#### SECTION IV.

*Is about the hiring of men.*

Men, hiring  
of how  
made.

552. The hiring of a man for service or other skilled work, by fixing the time, or by fixing the work in some other way, according to what has been set out in the third section of the second chapter, is permitted.

Wage, when  
not agreed.

563. When a person has done work for anyone, at his request, without there being an agreement for wages, if he is of the sort of person who works for wages, he takes the equivalent wage. If he is not, he takes nothing.

Wage, when  
amount not  
specified.

564. If someone says to a person, do such a work and I will give you something without mentioning the amount, that person also, if he does the work, has a right to the equivalent wage.

Wage,  
quantum  
meruit.

565. If someone employs a workman without naming the wage, if there is a known daily wage, he gives the known wage, if not, he gives a wage, equivalent to the work.

Wage in  
kind.

The work of skilled persons is like this in this respect.

566. When a contract of hire has been made with the person hired, for a thing to be given of the Qiyemi (Art. 146) sort, without its being fixed, an equivalent hire must be paid.

*For example.*—If someone says to anyone "Come to me and work for so many days and I will buy for you a pair of oxen" the giving of the oxen is not necessary, it is necessary to pay hire equivalent to the work,



But the hiring of a wet nurse, in accordance with a custom, for her clothes to be made, is permitted, and if the sort of clothes they are to be has not been described, clothes of a middling quality must be given.

567. Bakhshish, given from outside to servants, cannot be counted towards the wages.

568. When a master is hired to teach a science or art, if the time of the hire is stated, the hiring is agreed for that time.

So much so, that the master has a right to the wage by being ready and willing to teach, whether the pupil studies or not.

And if the time is not mentioned, the hiring is bad (Fasid), but is a concluded contract.

In this case, the master has a right to the pay, if the pupil studies, and otherwise he cannot take pay.

569. When a man gives, for instance, his son to a master of a trade, that he may learn an art, in case the two parties have not made a stipulation for payment of wage with one another, after the boy has learnt the art, if they demand payment of hire the one from the other, it is done according to what is the use and custom in the town.

570. If the inhabitants of a village engage a Khoja, or an Imam or a Mu'ezzin and these perform their duties, they take their pay from the inhabitants of that village.

571. When a person has been hired to do a work himself, that is to say, to do it by his personal work, he cannot employ another in his place.

*For example.*—If someone has made a bargain for a tailor to sew, with his own hand, for so many piastres, a robe, the tailor cannot let another person sew it, and it is necessary for him to sew it himself. And in case he has let another sew it, if it is destroyed, he must make compensation.

572. In case it has been agreed without condition, the hired person can employ another in his place.

573. If the hirer says to the person hired "Do this work," there is no condition.

*For example.*—When someone has made an agreement with a tailor, saying "Sew this robe for so many piastres," without making any restriction by saying of yourself, or by yourself, if the tailor causes it to be sewn by his assistant or another tailor, he is entitled to the agreed hire.

574. When there is no condition binding on the hired person, in the matter of things which are consequences of the work, as

Bakhshish  
by stranger  
not counted.

Teacher,  
hire of.

Apprentice-  
ship.

Khoja, etc.,  
to be paid  
by village:

Personal  
labour,  
contract for.

When hired  
person may  
employ  
others.

Matters  
subsidiary  
to work.



regards those, the use and custom of the town is made to be observed.

Like the custom that the thread should be the tailor's thread.

Porter, duty  
of, as to  
delivery.

575. It is necessary for the porter to take the load to the house, but it is not necessary for him to put it in its place.

*For example.*—There is no obligation for a porter to take a load upstairs, or to empty grain into a store house.

Hired person  
feeding of.

576. It is not necessary for the hirer to feed the person hired. Unless there is a custom in the town.

Auctioneer,  
pay of.

577. If the auctioneer has not sold a property, when he has taken it round for sale, when, afterwards, it is sold by the owner, that auctioneer cannot demand his pay. And if another auctioneer has sold it, the second auctioneer takes the auctioneer's pay in full, the first can take nothing.

578. When someone has given his property to an auctioneer, and said "Sell it for so many piastres," if the auctioneer sells it for more than that, the excess also is the property of the owner, the auctioneer can take nothing in excess of his pay as auctioneer.

Auctioneer  
fee paid  
abortive  
sale.

579. After the auctioneer has received his auctioneer's fee in respect of a sale, if someone having a right to the property appear, and takes it, or if the thing sold is returned for defect, the auction fee cannot be demanded back.

Wage, for  
reaping, part  
performance  
prevented by  
accident.

580. Workmen who have been hired, for so many piastres, to reap the corn in the field of a person and who have cut a quantity of the corn, if the rest is destroyed by a fall of hail, or by the happening of any other accident, they can take from the agreed wage what falls to the share of the corn that is cut. They cannot take the rest of it.

Wet nurse,  
when con-  
tract avoid-  
able.

581. In the same way as the milk mother can annul the hiring if she has been ill, so also the hirer, if she becomes ill or pregnant, or if the child does not take her breasts, or brings up the milk, can annul the hiring.

## CHAPTER VII.

*Is about the rights and duties of the letter and hirer after the contract is made. It consists of three sections:*

### SECTION I.

*Is about the delivery of the things hired.*



582. The delivery of the thing hired to the person who hires it, is the giving of leave and permission by the latter, in a way that the hirer can derive benefit from it without hindrance.

Delivery  
how made.

583. When a good contract of hiring has been made for a time or distance, it is necessary that delivery be made to the hirer, for the thing to remain constantly and continuously in his possession, until the completion of the distance or the end of the time.

*For example.*—When someone has hired a cart to go to such a place, or for such a time, he can use that cart until he has arrived at that place, or until the end of that time. During that time its owner cannot take it and use it for his own affairs.

584. In case the lessor has his own things in his Mulk immovable property and he lets it, rent does not run until he has delivered it cleared. Unless he has sold those things to the lessee.

Immovable  
property  
must be  
cleared.

585. When a lessor delivers a house, if he does not deliver one room in which he has put his things, the amount of the rent, which is the share of that room, is not paid. And as regards the rest of the house the hirer has an option.

Non-delivery  
of one room  
of a house.

And if the lessor, before the contract is annulled, clears the house, and gives possession of it, the letting becomes irrevocable. That is to say, the right of the lessee to annul it falls.

## SECTION II.

*Is about the right of the parties, after the contract, to deal with the thing let.*

586. If immovable property is let, the lessee can let it to another before taking possession. If moveable property is let, he cannot.

Sublet, right  
to.

587. The hirer can let to another a thing he has hired, when there is no variety as to the use and enjoyment people get from it.

Sublet, right  
to.

588. If a person who has hired by a bad (Fasid) hiring, after receipt, let the thing hired by a good (Sahih) hiring to another it is lawful.

Sublet, right  
to.

589. After a person has let by an irrevocable hiring for a fixed time, his property to another, if he again lets it for that time to another, the second hiring is not independent of the right of another (Nafiz), and is not held good.

Second  
letting  
during lease.

590. If the letter sells the hired property without the leave of the hirer, as regards the hirer the sale is not independent of

Sale by  
letter during  
lease.



the right of another (Nafiz), but between the purchaser and seller, it is Nafiz (Art. 113).

So much so that, at the expiration of the time of the hiring, the purchaser cannot refuse to take the property, the sale becoming irrevocable as regards him.

Except when before the expiration of the time, the buyer has demanded delivery of the thing sold from the seller and the delivery being impossible, the judge has for this reason annulled the contract.

And if the person who has hired the property accepts the sale, the sale is good (Nafiz), as regards everyone.

But when there has been a payment in advance by the hirer, the thing hired cannot be taken from him, until he has received the amount, paid by him, for the price of the rent. If the lessee delivers the thing hired without this being paid, his right of lien is gone.

### SECTION III.

*Sets out articles about the sending back and return of the thing let.*

591. At the end of the letting it is necessary for the hirer to give up (take his hand off) the thing hired.

592. After the end of the letting the hirer must not make any use at all of the thing hired.

593. When the letting is finished, if the letter wishes to take his property it is necessary that the person who has hired it should make delivery.

594. The return and sending back of the thing let, not being necessary on account of the person who hired, at the end of the hiring, the taking of the thing let, falls on the letter.

*For example.*—When the lease of a house has expired, it is necessary for the owner to go and take delivery of his house.

Likewise, when an animal has been hired to go to such a place, it is necessary for the owner to be at that place and take his animal.

And in case he does not go and take it, if the animal is destroyed in the hands of the person who hired it, without any fault or wrong on his part, compensation is not made.

But if he has hired it to go from a fixed place and return to it, it is necessary that he should take it to that place.

Hirer must let go at end of term.

Hirer must not use after term.

Hirer to make delivery.

Return falls on the lessor.



And if he does not take it to that place, but takes the animal to his own house, and keeps it there, and the animal perishes, compensation is made.

595. If the returning and sending back of the thing hired requires a porter and expenses, the cost of the transport falls on the person who lets it.

Expense of return.

## CHAPTER VIII.

*Is about compensation and consists of three sections.*

### SECTION I.

*Is about compensation for benefit.*

596. If someone has made use of some property without the leave of the owner, it is not necessary to pay for the benefit, since he is a kind of wrongdoer (Ghasib).

When payment for use and occupation by wrong doer is made.

But in every case if the property is Vaqf or infant's property, and if it is property intended to be let, and the use cannot be explained by ownership or contract, compensation for the use must be made, that is to say, an equivalent rent must be paid.

*For example.*—If someone, of his own accord inhabits for a time the house of another, without any contract of hiring, it is not necessary to pay rent. But if that house is Vaqf property, or belongs to an infant, whether the occupation is explained by ownership and contract or not, in every case he must pay a rent equivalent to the time for which he has occupied it.

Likewise, where there is an inn, if it is not explained by ownership or contract, an equivalent rent must be paid.

And again, if someone take a job horse without the leave of the owner, and uses him for a time, he must pay a rent equivalent to the time.

597. If property intended to be let is used, and the use is explained by ownership, compensation for the use is not payable.

Use of property intended to be let, explained by ownership.

*For example.*—If one part owner possess and use exclusively for a time the common property without the leave of the other part owner, the other part owner cannot take rent for his share, even if it is property intended to be let, by reason of the first part owner having used it as his own property.

598. If the use made of property prepared to be let is explained by contract, compensation for the benefit cannot be enforced.

Use explained by contract.

*For example.*—A person who has owned a shop in partnership, without the leave of his part owner sells it to another, and



the buyer possesses it for some time, although the other part owner does not consent to the sale, and takes possession of his share, however, much the shop may have been prepared for letting, he cannot demand rent for his share.

Because the use made by the purchaser is explained by a contract, and compensation for the benefit derived, cannot be enforced by reason of his having used it, saying "I am owner by sale".

Likewise, if someone sells and delivers to another a mill, as being his Mulk property, and after the buyer has taken possession of the mill and held it for some time, another person comes forward with a right to that mill, and, after proof and judgment, takes it from the purchaser, he cannot take anything in the name of rent for possession for the above-mentioned time from the purchaser. Because in this case also there is a contract to explain it.

Minor,  
hiring of.]

599. If a person takes a minor into his service, without the leave of the guardian, when the minor becomes of age he takes the hire equivalent to his services. And if the minor dies, his heirs also can recover from that person the wage equivalent to the services.

## SECTION II.

*As to compensation to be made by the hirer.*

Thing hired  
is an emanet.

600. Whether the contract of hire be a good (Sahih) contract or not, the thing hired is an emanet (Art. 762), in the hands of the hirer.

Hirer when  
liable for  
destruction.

601. If the thing hired is destroyed in the hands of the hirer, compensation is not enforced, unless there has been a wrongful act or default on the part of the hirer or he has done what he is not allowed to do.

Compensa-  
tion by hire,  
for loss or  
damage by  
wrongful act.

602. If the thing hired is destroyed or its value diminished by the wrongful act of the hirer, the hirer must make compensation.

*For example.*—If the hirer kills a hired animal by striking it, or if the animal by his violent driving is destroyed, the value of the animal is the compensation to be made.

What is  
wrongful  
act of hirer.

603. The acting of the hirer in a way contrary to custom, is a wrongful act.

If damage or injury arises from it he is responsible.



*For example.*—If one makes use of clothes which he has hired, which is contrary to the general custom, and the clothes are rubbed and worn, he is responsible.

Likewise, he is responsible, if a house is destroyed by the happening of a fire, in consequence of the making of a fire, larger in degree than is commonly made, in a hired house.

604. Compensation is payable, if the hired thing is destroyed or its value diminished by the neglect of the hirer in regard to taking care of it.

*For example.*—If a hirer loses his hired animal, by leaving it free in a place, and untied, he must make compensation.

605. If the hirer does what is contrary to what he is allowed to do, by going beyond what is agreed, he must make compensation. But, if he does what is contrary to the agreement, by changing to that which is equal to it, or less than it, he does not make compensation.

*For example.*—If an animal is destroyed by loading so many okes of iron on it, when it was hired to carry so many okes of olives, he is responsible.

But if the animal is destroyed when loaded with a burden lighter than olives, or equal to olives as regards weight, compensation is not paid.

606. At the end of the hiring, the hired thing, as before, is an emanet (Art. 762), like a Veda (Art. 763), in the hands of the hirer. Therefore if the hirer uses the hired thing after the end of the hiring, and it is destroyed, he makes compensation.

Likewise, when the letter demands his property at the end of the hiring, and the hirer does not give it, and after he has kept it, the property is destroyed, he must make compensation.

### SECTION III.

*Is about compensation to be made by a person who is hired.*

607. If, by the wrongful act or default of a person who is hired, the property delivered to him is destroyed, he must make compensation.

608. It is a wrongful act of the person hired, if he removes or works the thing contrary to the order of the hirer, clearly given or signified.

*For example.*—After someone has said to his shepherd, whom he has specially hired, "watch these animals in such a place and do not take them to another place," if the shepherd does not watch

Neglect of  
hirer in  
keeping  
thing hired

Hirer ex-  
ceeding  
rights under  
contract.

Hirer,  
liability of,  
at the end  
of the hiring.

Employee  
liable for  
loss by  
wrongful act.

Disobedi-  
ence is  
wrongful  
act.



in that place, but takes them to another place and watches there, he has done a wrongful act. And if, while he watches there the animals are destroyed, the shepherd must make compensation.

Likewise, if someone gives to a tailor a piece of cloth, and says to him, "Cut me, if it is enough, a long vest," and the tailor says, "there is enough," if there does not turn out to be a long vest on cutting it, that person can make the tailor make compensation for the cloth.

Neglect of  
hired person  
in keeping  
thing given  
to him.

60). It is a neglect of the hired person if he is remiss without excuse in the keeping of the thing delivered to him.

*For example.*—When an animal has strayed from a flock, if it is lost by reason of the shepherd not going to get it, in consequence solely of his negligence and inattention, the shepherd must make compensation. But if there is an overwhelming probability of the other animals being lost if he goes after it, if he has not got it, he does not make compensation by reason of there being an excuse.

Special  
employee  
is an Emin

610. A person specially hired is a custodian (Emin.)

So much so that when the property is destroyed in his hands without his working on it, there is no compensation.

And likewise, when the property is destroyed by the work done by him on it, without wrongdoing, there is no compensation.

Joint em-  
ployee liable  
for his own  
acts.

611. A hired man who is hired jointly whether he has done wrong or been guilty of negligence or not, makes compensation for damage and injury arising from his own act and deed.

6 Zy' lqa'dé, 1286. Date of Imperial Irade.

*Names:*

Meftish Evqaf Humayoun, El Seyd Khalil.

Nazir Divani Ahkiam 'Adlié, Ahmet Jevdet,

'An 'Aza Divan Ahkiam 'Adlié, El Seyd Ahmet Khouloussi.

'An 'Aza Shourai Devlet, Seyf Eddin.

'An 'Aza Shourai Devlet, Mehmet Emin.

'An 'Aza Divan Ahkiam 'Adlié, El Seyd Ahmet Hilmi.

'An 'Aza Gem'iet, Ibn 'Aabdin Zadé Allah el Din.

### THIRD BOOK OF THE AHKIAM 'ADHLIE.

*Is about Suretyship. It contains three chapters and a preface.*

#### THE PREFACE.

*Explains the technical terms used in the Fiq-h with reference to Suretyship (Kefalet).*

1. Destour,  
p. 112.

Kefalet.

612. Kefalet is to add obligation to obligation in respect of a demand for something.



That is to say, it is someone adding himself to another person, and himself undertaking a demand which is binding on that person.

613. Kefalet bil nefis is to be surety for the person of a man. Kefalet bil nefis.

614. Kefalet bil mal is to be surety for the giving of something. Kefalet bil mal.

615. Kefalet bit teslim is to be surety for the delivery of property. Kefalet bit teslim.

616. Kefalet bid derk is to guarantee the person of the seller, or the delivery and payment of the money given for property sold, in the event of its being taken possession of by a person who has a right to it. Kefalet bid derk.

617. Kefalet munjeze is a suretyship, which is not dependent on a condition, and is not dependent on a future time. Kefalet munjeze.

618. Kefil is one who adds his own obligation to the obligation of another, that is to say, it is someone, who is responsible also himself for a thing, for which someone else is responsible. Kefil.

The other person is called assil and Makful an-h.

Assil Mekful an-h.

619. Mekful leh in respect of suretyship is the person who is the claimant and creditor. Mekful leh.

620. Mekful bih is the thing for the payment or delivery up of which the surety has become responsible. Mekful bih.

In Kefalet bil nefis (Art. 613), the mekful an-h and the mekful bih are the same thing.

## CHAPTER I.

*Is about the contract of suretyship and contains two sections.*

### SECTION I.

*Is about the elements of suretyship.*

621. By the offer of the surety alone, a suretyship becomes a concluded agreement and enforceable (Nafiz).

Contract, how made.

But if the claimant (Art. 619) wish, he can reject it. But so far as the claimant has not rejected it, it remains.

And in this case, when in the absence of the creditor, a person becomes guarantor for his recovering his debt from someone, and the creditor dies without having received information of the suretyship, the surety is made liable under the suretyship.



Proposal,  
how made.

622. The proposal of the guarantor that is to say, the expression for suretyship, is the words which by use and custom are evidence of the undertaking and taking upon oneself.

*For example.*—If one says "I am become surety," or "I have guaranteed" or "I am bound to pay" the suretyship becomes a concluded agreement.

Conditional  
suretyship.

623. A suretyship is formed also by a promise dependent on a condition. (See Art. 84).

*For example.*—If someone says, "If such a one does not pay you what you have to receive from him, I will pay you" it becomes a guarantee. And if the debtor does not pay when the creditor makes a demand for what he has to receive, he claims it from the surety.

Temporary  
guarantee.

624. When someone says, "I guarantee up to such a time from to-day", the guarantee is temporary and becomes a concluded contract which is not dependent on a condition or a future time. See Art. 639.

Conditional  
suretyship.

625. In the same way as a suretyship without any condition, becomes a completed contract, a suretyship which is conditional with a condition for immediate or future performance, that is to say, with a condition to pay immediately or at such a time, becomes a concluded contract.

Surety for a  
surety.  
Many  
sureties.

626. It is lawful to become surety for a surety.

627. A number of sureties is allowed.

## SECTION II.

### *Is about the conditions of a suretyship.*

Surety must  
be compe-  
tent.

628. At the making of a contract of suretyship, it is a condition that the surety be a reasonable person and of age.

Infant can-  
not ratify  
when of age.

Therefore, for a madman, or imbecile, or infant to become surety is not good : when one becomes surety while an infant, if he confesses the suretyship on coming of age he is not made responsible for it.

Principal  
debtors no  
qualification  
required.

629. There is no condition that the principal debtor is to be of sound mind and of age.

Therefore, the becoming surety for the debt of a madman or infant is good.

As to thing  
guaranteed  
being  
known.

630. If the subject-matter of the suretyship be the person of a man, his being known is a condition. And if it be property, there is no condition that it be known.



Therefore, when someone has said "I am surety for the debt of such a man owing to such a man," if the amount of the debt is not known, still the suretyship is good.

631. In suretyship for the delivery of something, it is a condition that the thing, for which the guarantee is given, falls on the person primarily liable, that is to say, that the performance of it is compulsory on the principal.

Principal  
must be  
liable.  
Kefalet  
bilmal

Therefore, the becoming surety for the price of a thing sold or the payment of hire and other lawful debts is good.

Likewise, to become surety for property misappropriated is good, and on demand, the surety is bound to deliver it, either the thing itself, or its value.

And again, if the price of a thing has been named, and it has been delivered for sale at the price, if approved, a suretyship is good for it. But to become surety, before delivery, for the thing sold, is not good, because if the thing sold perishes in the hands of the seller, by reason of the sale becoming void, the liability to indemnify does not fall upon the seller, and only the return of its price, if it has been received, is necessary.

Likewise, for pledges and things lent for use, and things hired and other emanets (Art. 762), by reason of the principal not being liable for them, a suretyship for the things themselves is not good.

But if a person says "I am surety for the person guaranteed, if these things are wasted or destroyed," it is good.

And again, a guarantee for the delivery of these things, or of a thing sold is good. And the surety is compelled to make delivery of those things, if there is no right of retention for any cause, on demand.

And as in the case of a person become surety for the production of a person, the surety is released by the death of the person whose appearance he guarantees, so, in case these are destroyed, the surety cannot be made liable for anything.

632. In punishment a substitute is not allowed.

Therefore, to become surety for the carrying out of a death penalty or punishment, or personal correction is not good.

But it is lawful to become surety for the payment of the money, penalty imposed on the murderer and wounder.

633. It is not a condition that the person guaranteed should be solvent, it is lawful to become surety even for a bankrupt.

Guarantee  
for punish-  
ment.

Principal  
debtor need  
not be  
solvent.



## CHAPTER II.

*Is about the rights arising from a contract of suretyship, it contains three sections.*

## SECTION I.

*Sets out the effect of suretyship taking effect at once without any condition (Art. 617) conditional suretyship, and suretyship taking effect in the future.*

Claim  
results.

634. The result of suretyship is a claim, that is to say, there being a right for the person in whose favour the guarantee is given, to claim the thing guaranteed from the guarantor.

Kefalet  
munjeze.

635. In suretyship taking effect at once without any condition, if, as regards the principal debtor, the debt is payable in cash, the surety becomes liable to be called upon at once, if it is a deferred payment, he can be called upon on the completion of the time fixed.

*For example.*—If someone has said, "I am surety for the debt of a man," if the debt is payable in cash, at once, and if it is payable at a future time, at the end of that time, the creditor can demand from the surety the payment of it.

Conditional  
and future  
suretyship.

636. But in a contract of suretyship on which it is agreed that it is dependent on a condition, or subject to a future time, the surety cannot be called upon until the condition is fulfilled, or the time comes.

*For example.*—If someone says "I am surety for the payment, if such a man does not pay you what you have to receive," the suretyship being agreed with a condition, if that man does not pay his debt on demand, it can be claimed from the surety. On the other hand no demand can be made on the surety, before a demand has been made on the principal debtor.

Again, if a person says "If such a man steal your property I will make compensation," the contract of suretyship is good, and when the theft of that man is proved, the surety can be called upon to pay.

And again, if a person become surety on the condition, that there is to be given a delay of so many days, when the creditor makes a demand a delay is given of that number of days counting from the time when the creditor makes his demand, after the expiration of the days aforesaid the creditor, at whatever time he wishes, makes his demand, and the surety has no right to demand so many days again.



Likewise, if someone has said "I am surety in respect of such a one for the claims which shall be proved, or, for the amount of money which shall be lent to such a one, or for a thing which shall be wrongfully taken from you by such a one, or for the price of property which shall be sold to such a one" he is surety only on the happening of these circumstances, that is to say, he becomes liable to a demand on the taking place of the proof of the debt, the lending of the money, the turning out to be a wrongful appropriating of the property and the sale and delivery of the property.

Again, if a person says "I am surety for such a person to produce him on such a day" the surety cannot be called upon to produce him before that day.

637. As regards the proof of the condition the proof of its description and restriction is necessary.

*For example.*—In case someone has said, "I am surety for its performance whatever judgment is given against such a one," if that person confesses that he owes so many piastres, the paying of it by the surety is not necessary, as long as a judge has not given judgment.

638. In Kefalet bid derk (Art. 616) if someone turns up having a right to the property sold, the surety cannot be made responsible, until judgment has been given by the judge, for the return of the price by the seller.

Kefalet bid derk.

639. In a suretyship limited in time, the surety becomes liable to a demand, during the time of the suretyship alone.

Suretyship temporary.

*For example.*—When someone has said, "I am surety for one month from to-day", he becomes liable to a demand during that month only. At the expiration of it he is free from the suretyship.

640. After entering into a contract of suretyship, the surety cannot withdraw himself from the suretyship. But where the suretyship is conditional or for a future time, the surety can withdraw himself from the suretyship, before there has come into existence any debt due from the debtor.

Withdrawal by surety.

*For example.*—In the same way as a person, after he has become surety, unconditionally for the debt or person of a man, cannot withdraw himself from the suretyship, so also when one



has said, "I am guarantor for whatever is proved that you have to receive from such a one", he cannot turn back from the suretyship.

Because before the contract of suretyship there came into existence a debt against the debtor, although the proof of it, whatever it may be, is after the contract.

But in case anyone has said, "I am surety for anything which you shall sell to such a person, or for the price of anything you shall sell to such a person" he becomes responsible for the price of the property sold to that man by the person in whose favour the guarantee is given, but, before any sale, he can withdraw himself from the suretyship. So that, after he has said, "do not sell anything to that man, I abandon the suretyship," if the person, to whom the guarantee was given, sell anything to that man, the surety is not responsible for the price of it.

Surety can recover cost of delivery.

641. A person who has become surety for the return and delivery of property which has been wrongfully appropriated, or given as a loan for use, when he has delivered it to the owner, he has recourse against the wrongful appropriator or borrower for the cost of transport, that is to say, he takes the cost of transport from them.

## SECTION II.

*Explains the rights of the parties under a suretyship for the production of a person.*

Bail for a person.

642. The duty in a contract of bail for a person consists in the production of the person for whom bail has been given, in such a way that, if a condition has been made for the bringing up of the person for whom bail has been given, at any time, it becomes necessary for the person who has become bail to produce him at that time immediately when required by the person to whom bail was given.

If he is produced, it is all right, if he is not produced, the surety is compelled to produce him.

## SECTION III.

*Is about the rights of the parties in a guarantee for the delivery of things (Art. 614).*

Liability of surety.

643. The surety is liable to make compensation,



644. The claimant has an option as regards his demand. He can claim to take the thing, if he likes, from the surety, and, if he likes, from the person primarily liable.

Claims  
against  
surety and  
principal.

His demand from the one does not put an end to his right to make a demand from the other. After a demand from the one, he can make a demand from the other, or he can make a demand from the two together.

645. If a third person guarantees a sum of money, which has come to the debit, of someone, by reason of his being a surety for the delivery of property, the claim of the creditor is made against whichever of the guarantors he wishes.

Liability of  
surety for  
surety.

646. If persons, who are indebted jointly on account of a matter, become surety the one for the other, each of them is liable for the whole debt. See Art. 113

Debtors,  
surety for  
each other.

647. In case there are different sureties for one debt, if they have become sureties one after the other, everyone is liable for the whole debt.

Different  
sureties.

And if they have become sureties all at the same time, each one is liable for the amount, which is his share of the debt. But if these become sureties, the one for the other, for the sum which becomes necessary to be paid, in that case each one is liable to a claim for the whole debt.

*For example.*—After someone has become surety for a debt of 1,000 piastres, owing by someone, if another also in like manner becomes surety for the 1,000 piastres, the creditor can claim the sum from whichever of the sureties, he wishes.

But if these two persons become sureties together for those 1,000 piastres, each one is liable for the half of the 1,000 piastres. Unless they have become sureties, the one for the other, for the sum which may be owing. In that case each one is liable for the 1,000 piastres.

648. If on a person becoming surety there is a condition freeing the principal debtor, it is changed into a hawale (Art. 673).

Condition  
freeing  
debtor.

649. A transfer of debt (Art. 673), with a condition, that keeps alive the liability of the debtor, who makes the transfer, is a contract of suretyship.

Hawale with  
condition for  
liability of  
transferor.

Therefore, if someone says to his debtor, "make a transfer of the amount, which I have to receive from you, to such a one, on



the condition that you are also to be liable," and he also makes a transfer in that way, the creditor takes the amount which he has to receive from whichever he wishes.

Guarantee  
limited to  
property of  
debtor in  
hands of  
surety.

650. In case a person has the property of someone with him as an emanet (Art. 672), if he guarantees the debt of that person, on the condition that he is to make payment from that property, it is lawful. And the surety is compelled to make payment from that property. And if that property is destroyed, the surety is not liable for anything. But if, after he has been surety, he returns the property to the owner, in that case he becomes liable himself to make compensation.

Bail to  
produce  
person or  
pay debt.

651. When someone has become surety for a man to produce him at such a time and has become surety for the payment of his debt in case he does not produce him at that time, if he does not produce him at the time fixed, the payment of the debt by the surety becomes necessary.

And in case the surety has died, and his heirs make delivery of the person for whom he is surety at the time fixed, or that person delivers himself in accordance with the contract of suretyship, nothing is charged against the surety as regards property. And if the heirs do not deliver the person whose delivery is guaranteed, and he does not deliver himself, payment must be made of the debt, from the estate of the surety, which passes to his heirs. And if the person, in whose favour the guarantee is given, dies, his heirs make the demand.

And if, when the surety produces the person, whose production he has guaranteed, at the fixed time, the person to whom the guarantee is given absents and hides himself, the surety makes application to the judge, that delivery of the person may be made, by the appointment of a representative for him.

Uncondi-  
tional  
guarantee.

652. In an unconditional suretyship, if the debt is payable at once by the principal debtor, as regards the surety also, it is proof that it is payable at once. And if it is payable, after a delay, by the principal debtor, it is proof that it is payable after a delay by the surety also.

Suretyship  
with a  
condition.

653. In a suretyship with a condition, with whichever sort of condition it has been made, whether for present or future payment, the surety is liable accordingly.

Deferred  
guarantee.

654. As a guarantee for a debt, payable at a future known time, is lawful when postponed by that time, so is a guarantee lawful which is postponed for a longer time than that.



655. If there is delay given as regards the principal debtor for the payment of the debts, there is delay given also as regards the surety or the surety of the surety.

Delay for debtor gives delay to surety.

And a delay given also in respect of the first surety is a delay given as regards the second surety.

But a delay given as regards the surety is not a delay as regards the principal debtor.

Delay for surety not a delay for debtor.

656. Where someone owes a debt payable in the future, if, before the time of payment arrives, he is about to go to another country, if the creditor desires a surety from him, on application to the judge he is compelled to give a surety.

Debtor going abroad compelled to give surety.

657. If someone says to another "be surety for any debt which I owe such a one," and that person becomes surety, after he has paid the debt by reason of his suretyship, when he has recourse to the principal debtor, he has recourse for the thing for which he was surety, and no attention is given to what he has paid. But in case he has made a compromise with the creditor for a part of the debt, he has recourse for the sum paid under the compromise, and cannot have recourse for the whole debt.

Right of surety against principal debtor.

*For example.*—When someone has become surety for good coin, if he pays in base money, he recovers good coin from the principal debtor. And, on the contrary, if he becomes surety for base coin, and pays with good coin, from the original debtor he takes base coin.

Likewise, when one has become surety for so many piastres, and by agreement, makes payment by giving some goods, he takes from the principal debtor the amount of money, which he guaranteed.

But, if he has become surety for 1,000 piastres, and by agreement discharges the debt, with a payment of 500 piastres, he only recovers 500 piastres from the principal debtor.

658. If someone deceives another in a synallagmatical contract, he is responsible for the damage caused by it.

Breach of contract, liability for.

*For example.*—If someone buys a building site, and after he has made a building upon it, there turns up someone having a right to the land and he takes possession, the buyer besides recovering from the seller the value of the building site, recovers also the value of the building at the time when he gives it up.



Again, if someone says to a merchant "sell property to this my infant child, I have given him leave to trade," and afterwards that child is clearly shewn to be the child of someone else, the merchant can claim from the person, who made the statement, the money for the things, which he sold to the child.

### CHAPTER III.

*Is about release from suretyship. It contains three sections.*

#### SECTION I.

*Sets out some general rules.*

By payment  
of creditor.

659. When payment, or delivery is made, to the person, to whom the guarantee is given, of the thing guaranteed, whether by the principal debtor, or the surety, the surety is released from the suretyship.

Release of  
surety.

660. If the person to whom the guarantee is given, says "I have released the surety" or "I have no right against the surety," the surety is free.

By release of  
principal  
debtor.

661. The release of the principal debtor does not necessarily follow from the release of the surety.

662. The release of the principal debtor causes the release of the surety.

#### SECTION II.

*Is about the release from a suretyship for the production of a person.*

Production  
of person.

663. If the surety delivers the person, for whom he gave bail, to the person, to whom he gave bail at a place where legal proceedings are possible, like a large or small town, whether the person, to whom bail was given, takes him or not, the surety is released from the suretyship. But if there is a condition to deliver him at a named town, he is not released by delivering him at another town.

And when he has become surety to produce in a court of Justice, he is not released from his suretyship by delivering him in the street, but he is released, if he delivers him in the presence of an Officer of Police.

Delivery on  
request.

664. The surety is released from his suretyship by simply delivering up the person bailed on the demand of the claimant. But if he delivers him without a request being made by the claimant, he is not released from the suretyship, unless he has said "I have made delivery in accordance with my suretyship."



665. When a person has become surety to deliver a man on such a day, if he makes delivery before that day, even if the person to whom the guarantee was given does not accept, the surety is released from his suretyship.

Time of production.

666. If the person for whose production bail is given dies, the surety is released from his suretyship, and if there is a surety of the surety, he also is released.

Release by death of person.

Likewise, if the surety dies, he himself is released from the suretyship, and if there is a surety for him he also is released.

By death of surety.

And if the person to whom the guarantee is given dies, the surety is not released from the suretyship, and the heirs can claim from him.

### SECTION III.

*Is about release from suretyship for the delivery of property (Art. 614).*

667. If the creditor dies, and the debtor is his sole heir the surety is released from his suretyship.

Death of creditor debtor heir.

And if there are also other heirs of the creditor, the surety is only released from the debtor's share, from the shares of the other heirs he is not released.

668. If the surety or principal debtor has made a compromise with the creditor to pay part of the debt, if a stipulation is made for the release of both of them or of the principal debtor, or if no condition has been inserted, both are released.

Compromise.

And if it has been stipulated for the release of the surety alone, the surety only is released, and the creditor has an option, if he wishes, he recovers his whole debt from the principal debtor, if he wishes, he recovers the price of the compromise from the surety and the remainder from the principal debtor.

669. If the surety refer the creditor to another to get the money from him, and the creditor and the person, who accepts the transfer of the debt, accept, both the surety and the principal debtor are released.

Hawale.

670. If the surety for delivery of a thing dies, the thing for the delivery of which he is surety is claimed from his estate which he can dispose of (tereke).

Death of surety, estate liable.

671. When a person is surety for the price of a thing sold, if the sale is annulled, or the thing sold is taken possession of by someone who has a right to it, or is returned for a defect, the surety is free from his suretyship.

Surety for price of thing sold, how released.



Surety for  
rent.

672. When a property has been let until the expiration of a fixed time, and someone has become surety for the rent named, on the completion of the letting, the suretyship comes to an end too, afterwards if a contract of letting is made anew in respect of that property, the suretyship does not cover this.

By order of the Sultan,  
18th Mubharrem, 1287.

## BOOK IV

1. Destour,  
122.

*Is about hawale. It contains two chapters and a preface.*

### THE PREFACE

*Explains the technical terms in the Sher' Law used in connection with hawale.*

Hawale.

673. Hawale is to make a transfer of a debt from one debtor account to the debtor account of another. (See 4, C.L.R. 48).

Muhil.

674. Muhil is a person, who is a debtor and makes a hawale.

Muhal leh.

675. Muhal leh is a person who is a creditor.

Muhal  
aley-h.

676. Muhal aley-h is a person who accepts a hawale to himself.

Muhal bih.

677. Muhal bih is the thing which is transferred by hawale.

Hawale  
muqayyede.

678. Hawale muqayyede is a hawale restricted by a stipulation, for the transferee to pay from property of the transferor, owed to him by the transferee, or in the hands of the transferee.

Hawale  
mutlaqa.

679. Hawale mutlaqa is a hawale which is not restricted for payment to be made from property of the transferor in the hands of the transferee.

## CHAPTER I.

*Is about the contract of hawale. It is divided into two sections.*

### SECTION I.

*Is about the essential things in a hawale (rukn).*

Hawale,  
how made.

680. If the debtor who makes a hawale says to his creditor, "I have transferred (hawale) you to the account of such a one," and they also accept, the hawale is concluded.

Creditor and  
transferee  
can make.

681. The contract of hawale can be made between the creditor and the person who accepts the hawale alone.



*For example.*—If someone says "So many piastres which I have to receive from such a one, undertake to pay on your own account by way of hawale," and that person says also "I have accepted" or if he says "I accept by way of hawale that so many piastres which you have to receive in respect of such a one shall stand against my account", and that person accepts, there is good hawale.

So much so, that if the person who accepts the hawale, repents afterwards, his repentance is of no use.

682. A hawale carried out between the debtor and the creditor alone, when the person who accepts the hawale, has accepted after notice, is good and complete.

Creditor and debtor with assent of transferee.

*For example.*—Where someone makes a hawale of his creditor to the account of someone, who is in another country, and after the creditor has accepted, the person, to whom the hawale is made, after notice, also accepts, the hawale becomes complete.

683. A hawale carried out between the debtor and the person to whom the hawale is made, becomes a concluded contract, subject to the acceptance of the creditor.

Hawale by debtor and transferee is subject to acceptance of creditor.

*For example.*—If someone says to another "take upon yourself by way of hawale the debt which I owe to such a one," and the other accepts, it is a concluded contract, dependent on the right of another (Mevquf). When the creditor accepts, the hawale is a contract which is not dependent on the rights of another (Nafiz).

## SECTION II.

### *Is about the conditions of a hawale.*

684. At the making of a hawale, it is a condition that the debtor and creditor be of sound mind and that the person, who accepts the hawale, should have arrived at full age.

Parties must be competent

Therefore, as the making of the hawale of a debt to someone by an infant, without understanding (Ghayr mumeyyiz), and his accepting a hawale from someone, is void, so also an infant's accepting hawale from someone, and taking it upon himself, is void, whether he has understanding or not and whether he has authority (Me'zun) or is under interdiction (Mahjur.)

685. It is a condition of the hawale being Nafiz (Art. 113), that the debtor and the creditor be of age.

Hawale when Nafiz.

Therefore, the giving and taking of a hawale by an infant having discretion (Mumeyyiz) is a contract dependent on the assent



of his natural guardian, and when the guardian has given his consent, it is independent of the assent of anyone (Nafiz).

However, if he has taken a hawale and the guardian has consented, it is also a condition that the person, who accepts the hawale, should be richer than the original debtor, who makes the hawale.

Transferee  
need not be  
debtor of  
debtor.

686. It is not a condition that the person, who accepts the transfer, should be a debtor to the debtor who makes the transfer, and when the transferor has nothing to receive as regards him, his hawale is good.

Debt must  
be capable  
of gua-  
rantee.  
Debt must  
be known.

687. There can be no good hawale for a debt, for which there cannot be a good guarantee.

688. The hawale of any debt, for which a good guarantee can be given, is good. But it is necessary that the thing, which is transferred, should be known. Therefore, the hawale of a debt which is not known, is not good.

Therefore, if someone says "I have accepted by way of hawale what it shall be proved you have to receive from such a one, the hawale is not good."

Hawale of  
debts due by  
hawale or  
guarantee.

689. As the hawale of debts, which of the class of primary debts is good, so also the hawale of debts, which belong to the class of debts, by hawale or suretyship, is good.

## CHAPTER II.

### *Is about the consequences of a hawale.*

Consequence  
of a hawale.

690. This is the consequence of a hawale, that the debtor, who makes the hawale, is free from his debt, and his surety, if there is one, is free from his suretyship. And the right to demand that debt from the person, who accepts the hawale, is established for the creditor.

And when a person, who holds a pledge, has made a hawale throwing the debt on someone in the place of the person who gives the pledge, his right to retain and hold the thing pledged, no longer exists.

Rights  
between  
transferee  
and debtor  
in uncon-  
ditional  
hawale.

691. When a debtor has made a hawale which is unrestricted (Mutlaqa, Art. 677), if he has nothing to receive from the person who accepts the hawale, after payment, the person, who accepts the hawale, can claim against the person who made it. And if there is anything to receive, after payment, that is set off against the debt.

Rights over  
property  
of debtor  
in hands of  
transferee  
for payment.

692. In a hawale Muqayyede (Art. 678), the right of the debtor, who makes the hawale, to claim in respect of the thing which is transferred by the hawale (Art. 677), ceases. And the person, who accepts the hawale can no longer give it to the debtor,



who made the hawale, and if he does give it, he is liable to make compensation. And, after making compensation, he has a claim against the debtor, who made the hawale. And if the debtor, who made the transfer, dies before payment and his debts are greater than the property included in his estate (Tereke) his other creditors cannot touch the thing which was the subject of the hawale.

693. When there is a hawale made with a restriction that payment is to be made from what is to be received by the seller as the price of the thing sold, standing to the debit of the purchaser, if the price can no longer be claimed in consequence of the thing sold being destroyed before delivery, or if the thing sold is returned under a condition giving an option, or an option on inspection, or an option for defect, or, if the sale is rescinded, the hawale is not void. And the person who accepts the hawale, after payment, can claim from the person, who made the hawale, that is to say, he recovers what he has paid, from the debtor, who makes the hawale.

When condition to pay from price of thing sold,

But in case there is a person, who claims by right that property, and he takes possession, the hawale is void, if it is clear that the person who accepted the hawale is free from that debt, by reason of the thing sold being taken.

694. In a hawale with a restriction that payment is to be made from money of the debtor who made the hawale, which is an emanet (Art. 762), in the hands of the person who accepted the hawale, if someone turns up, who has a right to that property, and possession is taken of it, the hawale is void, and the debt returns to the debtor, who made the hawale.

Where condition to pay from money of debtor in hands of transferee,

695. In a hawale which is with a restriction that payment is to be made from money of the debtor in the hands of the person who accepts the hawale, if that money is destroyed, and if no compensation is to be made, the hawale becomes void, and the debt returns to the debtor, and if compensation is to be made, the hawale is not void.

Loss of money.

*For example.*—When someone makes a hawale of his creditor to someone, on the condition, that that person is to pay from the money of the debtor, which is an emanet in his hands, if, before payment, that money is destroyed without fault, the hawale becomes void, and the claim of the creditor against the debtor returns. But if that money is wrongfully appropriated, or, if its payment becomes necessary in consequence of its having been destroyed by that person, while it was an emanet (Art. 762), the hawale is not void.



Hawale with condition to pay from price of debtor's property.

Time for payment by transferee.

Transferee no claim before payment.

Release of transferee.

Transferee released by inheritance.

1. Destour, 126.

Rehn.

696. When someone has made a hawale of his creditor to someone, on the condition that he is to make payment from the price realised on the sale of fixed property of his own, and that person accept with that condition, the hawale is good, and the person, who accepts the hawale, is bound to pay the creditor from the price realised on the sale of that property.

697. In a hawale which is not clear, that is to say, which does not declare whether the thing which is transferred by hawale is to be paid at once, or after a delay, if the debt is payable at once by the debtor who makes the transfer, the hawale is for payment at once, and the person, who accepts the hawale, must pay it at once. And if the debt is for payment after a delay, the hawale is for payment after a delay, and its payment is necessary on the expiration of the delay.

698. The person, who accepts the hawale, has no claim on the debtor, who makes the hawale, before he has paid the debt.

And when he shall claim from him, his claim is for the thing which is the subject of the hawale, that is to say, whatever sort of money it may be, which was the subject of the hawale, he takes that from the debtor, who makes the hawale, but he cannot make a claim for what he has paid.

*For example.*—If a hawale has been made and the subject of it is silver aqjes, and he pays gold, he takes from the debtor, who made the hawale, silver aqjes, he cannot demand gold.

Likewise, if he pays with other property and things, he recovers the aqjes, which were the subject of the hawale.

699. As the person who accepts a hawale, is free from the debt, by the payment of the subject matter of the hawale, or by a hawale made transferring the obligation to another, or by the creditor giving him an acquittance, so likewise, is he free from the debt, if, when the creditor has made a present of it, or given it as alms, he accepts it.

700. If the creditor dies, and the person who accepts the transfer is his heir, the hawale ceases to have effect.

## BOOK V.

*Is about pledge (Rehn) and contains a preface and four chapters.*

### THE PREFACE.

*Explains the technical terms used in the Sher' Law in connection with pledge.*

701. Rehn is to make a property a security in respect of a



right of claim, the payment in full of which from that property is permitted.

The property is called "Merhoun" and also "Rehn" (n. b. hereafter called "pledge").

702. Irtihan is to take a rehn.

Irtihan.

703. Rahin is a person who gives a rehn (n. b. hereinafter called pledgor.)

Rahin.

704. Murtehin is a person who takes a rehn (n. b. hereinafter called pledgee.)

Murtehin.

705. 'Adl is a person with whom the pledgor and pledgee have deposited and delivered the pledge.

'Adl.

## CHAPTER I.

*Sets out the precepts relating to a contract of pledge (rehn) and contains three sections.*

### SECTION I.

*Sets out the precepts about the elements of a contract of pledge.*

706. The pledge becomes a concluded contract by the offer and acceptance of the pledgor and pledgee. But, until it is received, it is not complete and irrevocable. Therefore, the pledgor, before delivery can go back from the pledging.

Pledge, how made.

707. The offer and acceptance of the pledge is by words being spoken which are evidence of agreement, as, by the pledgor saying, "I have made this thing a pledge against my debt to you," or saying other words like this, and by the pledgee saying "I have accepted" or "I have consented".

Offer and acceptance, how made.

And there is no condition that there should be spoken the word "rehn".

*For example.*—If someone on purchasing something for so many piastres, gives the seller property and says "keep this until the money is paid," that property is made a pledge.

### SECTION II.

*Sets out the conditions for making a contract for pledge.*

708. It is a condition that the pledgor and pledgee be of sound mind.

Competency of pledgor and pledgee.

But it is not a condition that they be of age. So that it is permitted for an infant who has discretion (Mumeyyiz) to be either a pledgor or pledgee.



What may  
be pledged.

709. It is a condition that the thing pledged be a thing that is good to be sold.

Therefore, it must be existent at the time of the contract, must be Mal Mutaqavvim (Art. 127), and must be capable of delivery.

For what  
pledge may  
be given.

710. It is a condition that that for which the pledge is security, be something, which gives a right to a claim.

*For example.*—It is permitted to make a pledge for property wrongfully appropriated, but to make a pledge for property which is an emanet (Art. 762,) is not good.

### SECTION III.

*Is about the thing pledged including additional things, and of a change and increase taking place after the contract of pledge.*

Things not  
mentioned.

711. As things which are included, without mention, in a sale, are included also in a pledge, when a building site is pledged, all that is on it, the fruit and the trees, and the things planted and other things sown, although they are not clearly mentioned, are included.

Exchange of  
pledge  
allowed.

712. The exchange of a pledge for another pledge is allowed.

*For example.*—After someone has pledged his watch for his debt of so many piastres, if he takes a sword and says "take this in the place of the watch", and the pledgee returns the watch and takes the sword, the sword becomes a pledge for the security of that sum of money.

Addition of  
things.

713. After the completion of the contract it is permitted to increase the things pledged by the pledgor.

That is to say, immediately after one has pledged a thing, the contract still being in existence, the addition of another thing to that thing, that it also may be a pledge, is lawful.

And this increase becomes attached to the original contract that is to say the original contract becomes as though it had been made for these two things.

And the whole of these two things becomes a pledge for the debt, which existed at the time when the increase was made.

Increase of  
debt allow-  
ed.

714. When a thing has been pledged to secure a debt, an increase of the debt to be secured by that pledge is lawful.

*For example.*—After someone has pledged his watch worth 2,000 piastres to secure 1,000 piastres, if he again takes 500 piastres more from his creditor, on the condition that it is to be secured by that pledge, that watch becomes a pledge for 1,500 piastres.

Increase  
born.

715. An increase, which is born from the thing pledged, becomes a pledge together with the thing originally pledged.



## CHAPTER II.

*Sets out some precepts relating to the pledgor and pledgee.*

716. The pledgee can of his own accord annul the contract of pledge.

Pledgee can annul.

717. Until the assent of the pledgee has been given, the pledgor cannot annul the contract of pledge.

Pledgor cannot annul.

718. The pledgor and pledgee by agreement can annul the contract of pledge.

Revocation by consent.

But after it is annulled, there exists a right for the pledgee to hold and keep the thing pledged, until the pledgor has paid the amount which the pledgee has to receive and which is secured by the pledge.

719. The giving of a pledge by the principal debtor to his surety is lawful.

Pledge to surety.

720. If two creditors of one debtor, whether they be partners or not, take one pledge from him it is lawful. And this pledge becomes a pledge for the securing of the whole of the two debts. See Art. 739.

Pledge to two creditors.

721. It is lawful if one takes a pledge for what is to be received from two persons. This also becomes a pledge for the whole of the two claims. See Art. 740.

Pledge for two debtors

## CHAPTER III.

*Sets out precepts relating to the things pledged. It is divided into two sections.*

## SECTION I.

*Is about the maintenance and expenses of the thing pledged.*

722. The pledgee keeps the thing pledged in person, or he causes it to be kept by someone whom he trusts, such as his family or his partner or his servant.

Pledgee to preserve the thing pledged.

723. The expenses incurred for the keeping of the pledge, such as the rent of the place and the hire of the watchman, fall on the pledgee.

Pledgee to pay expense of keep.

724. If the thing pledged is an animal the cost of forage, and the wage of the herdsman, falls on the pledgor.

Pledgor pays keep of animal. And upkeep of immovables.

And if it is immovable property, expenses incurred for improving its use and for its preservation, like repairing it, and watering it, and grafting, and weeding it, and the cleaning of the water channels, falls on the pledgor.

725. If either the pledgor or the pledgee, of his own accord, pays expenses which fall on the either of them, it is a gift. Afterwards a claim cannot be made.

Expense paid cannot be recovered.



## SECTION II.

*Is about the pledge of a thing borrowed from another (Rehn Musta'ar).*

Lawful with leave.

726. When someone has borrowed property of another with the leave of that person, it is lawful to pledge it. This is called "Rehn Musta'ar." See Arts. 765, 823.

Unconditional leave.

727. If the permission of the owner of the property be without condition, the person who has the property on loan can pledge in any way.

Limited leave.

728. When the owner of the property has given permission under a restriction, saying, that it is to be pledged to secure so many piastres, or that kind of property, or to such a person, or in such a town, the person, who takes the thing on loan, can only make a pledge in accordance with his condition and restriction. See Arts. 732, 735, 736, 737.

## CHAPTER IV.

*Is about the consequences of making a pledge. It is divided into four sections.*

## SECTION I.

*Is about the general consequences of making a pledge.*

Right of pledgee.

729. A consequence of making a pledge is that the pledgee has a right to keep possession until redemption of the pledge, and if the pledgor has died, he has a better right than the other creditors, and can make full payment of the debt from the pledge.

Demand of debt.

730. The pledge is no impediment to the demand of the debt, after he has accepted a pledge, the right of the pledgee to demand what he has to receive from the creditor is preserved.

Part payment of debt.

731. When part of a debt has been paid, it does not become necessary to return the part of the pledge equivalent to it. The pledgee has a right to hold and keep the whole of what is pledged for the remainder, until the debt is paid in full.

But when two things have been pledged, if there has been an amount from a debt allotted to each of them, and it has been paid, the pledgor can free that alone.

Right of lender of thing pledged.

732. The owner has a right to claim from the pledgor of property borrowed from him to release it from the pledge and return it to him. And in case the borrower is not able to pay the debt, by reason of his poverty, the lender, by paying the debt on his own account, can release his property from the pledge.



733. By the death of the pledgor and pledgee the pledge does not become void.

Death does not avoid pledge.  
Death of pledgor, effect of.

734. On the death of the pledgor, his heirs, if they are of age, stand in his place, and it becomes necessary for them to free the thing pledged by paying the debt from the estate of the deceased person (tereke).

And if the heir is an infant, or if although of full age, he is absent from the place, that is to say, he is at the time on a distant journey (Art. 1664), his guardian sells the thing pledged, with the permission of the pledgee, and pays the debt from the price.

735. A person who has lent property cannot take it from the pledgee, until payment of the debt against which the thing borrowed has been pledged, whether the person who borrowed and pledged the property be alive, or whether he die before the pledge comes to an end.

Right of lender of thing pledged.

736. If someone, who is pledgor of a borrowed thing, dies in insolvent circumstances, the borrowed thing which is pledged remains as it was before a pledge in the hands of the pledgee.

Rights of lender of pledge, when pledgor dies insolvent.

But it cannot be sold until they have the consent of the lender.

And when the lender of the thing pledged has proposed to pay the debt by the sale of the thing pledged, if the price is sufficient to pay off the debt, it is sold without regard being paid to the assent of the pledgee. And if the price of the pledge is not sufficient to pay off the debt, he cannot sell until he has obtained the consent of the pledgee.

737. If the person who lent the thing dies and his debts are greater than his estate (tereke) an order is made upon the pledgor personally to free the borrowed thing pledged, by payment of the debt, and to return it. And if, by reason of his poverty, he is unable to pay the debt, the borrowed thing pledged continues pledged, as it was before, with the pledgee.

Rights when lender of thing pledged dies.

But the heir of the person who lent the thing can free it by paying the debt.

And if the creditors of the person, who lent the thing, have claimed the sale of the pledge, if the price is sufficient for the debt, it is sold without regard to the consent of the pledgee, and if it is not sufficient to pay the debt, it cannot be sold until the consent of the pledgee is obtained.

738. When the pledgee dies, the thing pledged remains pledged with his heirs.

Death of pledgee.



Payment of  
debt due to  
one of two  
pledgees.

739. A pledgor who has given a pledge for debts due to two people, if he pay the debt due to one, cannot demand back half the thing pledged, he has no right to free the pledge, until he has paid in full what the two of them have to receive.

Pledge given  
by two deb-  
tors, right  
of pledgee.

740. A person, who has taken a pledge, from two debtors, can hold the pledge, until what he has to receive from both has been paid in full.

Destruction  
or damage  
of pledge by  
pledgor or  
pledgee.

741. When the pledgor has destroyed or damaged the thing pledged he must make compensation, and when the pledgee has destroyed or damaged it, the amount of the value is struck off from the debt.

By third  
party.

742. If some other person has destroyed the pledge, he pays the value which it had on the day it was destroyed. And that value becomes a pledge in the hands of the pledgee.

## SECTION II.

*Is about the rights of disposition of the pledgor and pledgee over the thing pledged.*

Neither can  
pledge with-  
out leave.

743. If the pledgor or pledgee, without the leave of the other, pledge the thing pledged to a third party, it is void.

Pledge by  
pledgor with  
leave, effect  
of.

744. If the pledgor pledge the thing pledged to a third person, with the leave of the pledgee, the first pledge becomes void, and the second pledge is good.

Pledge by  
pledgee with  
leave, effect  
of.

745. If the pledgee by leave of the pledgor pledges the thing pledged, the first pledge becomes void, and the second pledge is of the kind, which a pledge of a thing lent is (Art. 726), and becomes good.

Sale by  
pledgee with-  
out leave.

746. If the pledgee without the leave of the pledgor sells the thing pledged, the pledgor has an option, if he wishes he sets aside the sale, if he wishes, he makes it, by his consent, Nafiz (Art. 113).

Sale by  
pledgor  
without  
leave.

747. If the pledgor sell the thing pledged without the leave of the pledgee, the sale is not Nafiz (Art. 113), and the right of the pledgee to keep possession is not destroyed. But if the debt is paid, that sale becomes Nafiz (Art. 113),

Likewise, if the pledgee gives his consent to that sale it becomes Nafiz (Art. 113), and the pledge comes out of the condition of being a pledge, and the debt remains in its existing state. And the price of the thing sold becomes a pledge in the place of the thing sold. And if the pledgee does not give his assent, the buyer has an option. If he wishes, he waits till the



pledge is at an end, and, if he wishes, he causes the sale to be annulled, by application to the Judge.

748. Either the pledgor or pledgee, with the leave of the other, can lend the thing pledged to some other person, and afterwards, either of them can bring it back to its state of pledge.

Loan of  
pledge with  
leave.

749. The pledgee can lend the thing pledged to the pledgor.

Pledgee can  
lend to  
pledgor.

In this case, if the pledgor dies, the pledgee again has a better right to the thing pledged than the other creditors of the pledgor.

750. The pledgee cannot take any benefit from the thing pledged, without the leave of the pledgor. But if the pledgor consents and allows it, the pledgee makes use of the thing pledged, and takes the produce, such as, milk and different kinds of fruit. And nothing is struck off from the debt in consideration of this. See Art. 715.

Right to  
usufruct.

751. When the pledgee goes to a place, he can take with him the thing pledged, if the road is safe.

Right of  
pledgee to  
take pledge  
with him.

### SECTION III.

*Is about the consequences of a pledge being deposited in the hands of a third person ('Adl.)*

752. In the hands of the third person ('Adl), it is as if in the hands of the pledgee.

Third person  
represents  
pledgee.

That is to say, when the pledgor and pledgee agree to deposit the pledge with someone in whom they have trust, and he agrees and takes possession, the pledge becomes complete and irrevocable. And that person stands in the place of the pledgee.

753. After, at the time of the contract a condition has been made for the pledgee to take possession of the thing pledged, if the pledgor and pledgee, by agreement, deposit it in the hands of a third person it is lawful.

Agreement  
to deposit  
after con-  
tract.

754. While the debt exists, the person with whom a pledge has been deposited, cannot give the thing pledged to the pledgor, or pledgee, without the consent of the other. If he does give it, he has a right to demand it back. And, if the pledge is destroyed before it is given back, the person with whom it was deposited, is liable to make good its value.

Duty of  
bailee.

755. If the person, with whom the pledge is deposited, dies, the pledge is deposited with another person, if both parties agree about him. And, if an agreement cannot be come to between them, the judge deposits the pledge in the hands of a person to keep.

Death of  
bailee.



## SECTION IV

*Is about a sale of the thing pledged.*

Consent  
necessary.

756. Neither the pledgor nor pledgee, as long as the other has not consented, can sell the thing pledged.

For satisfac-  
tion of  
debt.

757. When the time for paying the debt has arrived, and the pledgor refuses to make payment, an order on the pledgor is made by the judge, to pay the debt by selling the thing pledged. If he refuses and is obstinate, the judge pays the debt by selling the thing pledged.

When  
pledgor is  
absent.

758. When the pledgor is absent, if it is not known whether he is alive or dead, the pledgee applies to the judge, for payment of his claim, by the sale of the pledge.

Where  
pledge is  
likely  
to perish.

759. If there is fear of the thing pledged going bad, the pledgee can sell it with the leave of the judge. And the price itself in his hands becomes a pledge. And if he sells without obtaining the leave of the judge, he makes himself responsible.

Likewise, if a vineyard or garden has been made a pledge, and there is fear that destruction will come upon the fruit or vegetables, it can be sold, on obtaining leave from the judge. But if the pledgee sells of his own accord, he makes himself responsible.

Attorney  
to sell.

760. If the pledgor appoints the pledgee, or the person with whom the pledge is deposited, or some other person, his attorney to sell the pledge, when the time for payment of the debt has come, it is lawful. And the pledgor can no more dismiss that attorney from his attorneyship. And he is not dismissed by the death either of the pledgor or pledgee.

Refusal of  
Attorney.  
to sell.

761. A person, who is attorney for the sale of a pledge, when the time has come for the payment of the debt, sells the pledge, and delivers the price to the pledgee. And if he refuses, constraint is put upon the pledgor to sell the pledge. And if he also refuses and is obstinate, the judge sells it.

And if the pledgor, or his heirs, cannot be found, constraint is put upon the attorney to sell the thing pledged. And if he refuses, the judge himself sells.

Date of Imperial decree,

14th Muharrem, 1288.

[Note.—As to the mortgage of mulk immovable property. See Law 21, Rebi'ul Akhir, 1287. 1 Destour, 237. 28 Rejeb, 1291, sections 16, 19. 3 Destour, 447. Ongley, 225. 2 Nicolaidès, 954.]



## BOOK VI.

*Is about emanet; it is divided into three chapters and a preface.*

## THE PREFACE.

1. Destour,  
134.

*Is about the technical terms used in the Sher' Law in connection with emanet.*

762. "Emanet" is a thing found with someone, who is considered to be in charge of it. Whether it is made an emanet by a contract requiring the safe keeping of property, like property entrusted to another for safe keeping (Vedi'a, Art. 763), and whether it be an emanet in a contract requiring compensation for loss, like a thing taken on hire, or a thing received as a loan for use, and whether it passes as an emanet into the hands of someone without contract existing or a design formed. As, if the property of a neighbour falls into the house of someone on account of the wind, by reason of there being no contract, that property is not property deposited with another for safe keeping (Vedi'a, Art. 763), but it is an emanet (Plural emanat). See 3, C. L. R., 185.

Emanet

763. Vedi'a is property deposited with someone for safe keeping.

Vedi'a.

764. Ida' is to deliver to another the safe keeping of one's own property. To the person who delivers it, the name Mudi' is given to the person who accepts it, the name Vedi' and Mustevda.

Ida'.

765. 'Ariyyet is property the use of which is granted gratuitously, that is to say, without a price.

'Ariyyet.

It is also called "Mu'ar" and Musta'ar.

Mu'ar.  
Musta'ar.

766. I'are is to give an 'Ariyyet (Art. 765). To the person who gives it, the name "Mu'ir" is given.

I'are.  
Mu'ar.

767. Isti'are is to take an 'Ariyyet (Art. 765). To the person taking it, the name "Musta'ir" is given.

Isti'are.  
Musta'ir.

## CHAPTER I.

*Is about some general rules regarding emanent (Art. 762).*

768. An emanet is not a thing for which compensation has to be made.

No compensation without fault.

That is to say, in case of the destruction or damage of an emanet without any fault being committed by the person entrusted (Emin), it is not necessary to make compensation.

769. If someone finds a thing on the road, or in any other place, and takes it for the purpose of making it his own property, he becomes like a wrongful appropriator. (Ghasib, Art. 881).

Finder,  
duties and  
liabilities of.



Therefore, in case that property has been destroyed or damaged, although there may not be any fault of his own, he is responsible.

But in case he has taken it for the purpose of giving it to its owner, if its owner is known, in his hands, it is a pure emanet. It is necessary that he should deliver it to its owner.

And if its owner is not known, it is a thing picked up by a chance, and it is an emanet in the hands of the person who picks it up, that is to say, who finds and takes it.

Duties of  
finder.

770. A person, who finds a thing picked up by chance, causes advertisement to be made, and until the owner appears, he keeps it with himself as an emanet. If someone appears and proves that it is his own property, it becomes necessary to give it up to him.

Liability for  
damage to  
things in  
one's posses-  
sion.

771. In case the property of another is destroyed, by accident, while in some one's possession, if he has taken it without the leave of the owner, in every case he is responsible.

And if he has taken it with the leave of the owner, by reason of its being an emanet in his hands, there is no responsibility.

But in case it was on approval for sale at a fixed price, and the price was named, compensation becomes necessary.

*For example.*—If someone takes a basin from a china shop, of his own accord, and it falls from his hand and is broken, he is responsible. And, if he takes it by the permission of the owner, and while he is looking at it, it by chance falls to the ground and is broken, compensation does not become necessary. And if that basin falls on a quantity of other basins, and is broken and also breaks them, compensation must be made for those basins, but no compensation is necessary for that basin, by reason of its being an emanet.

But if he says "how many piastres is this basin? And, after the shopkeeper has said "Take it. It is so many piastres", he takes it in his hand and it falls and is broken, he is responsible.

Likewise, when one is drinking sherbet, and the cup of the sherbet seller falls from his hand and is broken, by reason of its being an emanet of the class 'Ariyyet (Art. 765), no compensation is necessary. But if it has fallen in consequence of the bad manner in which he himself used it, he is responsible.

Permission  
to take what  
is.

772. Permission by indication is the same as permission explicitly given. But, if there is an explicit prohibition, permission by indication cannot be considered.



*For example.*—When a person has entered the house of another with his leave, he has by indication leave to drink water from a tumbler standing openly. And while the person is drinking, if the glass in his hand falls by accident, and is broken, compensation does not become necessary.

But when the owner of the house says “do not touch that tumbler” and makes a prohibition, if the person takes it in his hand, and it falls and is broken, he is responsible.

## CHAPTER II.

*Is about property delivered to someone for safe keeping (Vedi'a) and contains two sections.*

### SECTION I.

*Sets out precepts relating to the contract and condition for making a delivery for safe keeping (Ida').*

773. A delivery for safe keeping becomes a concluded contract, by a proposal and acceptance, expressly made or indicated.

Contract,  
how made.

*For example.*—If the owner of the thing delivered say “I have delivered this thing to you for safe keeping” or “I have made it an emanet,” and the person who accepts it says “I have accepted” there is a concluded contract of delivery for safe keeping expressly made.

Also, if someone enters an inn and says to the innkeeper “where can I tie up my animal?” And the innkeeper shews a place, and the person ties it there, a contract of delivery for safe keeping is concluded by implication.

Likewise, if someone leaves his property with a shopkeeper, and goes away, and the shopkeeper sees it and is silent, that property becomes a thing delivered for safe keeping (Vedi'a) with the owner of that shop.

But if the owner of the shop says “I do not accept” and returns it, there is no contract of delivery for safe keeping.

And, likewise, someone leaves his property with a number of persons, intending to deliver it for safe keeping, and goes away, and they also see it and keep silence, that property becomes a thing delivered for safe keeping with all of them.

But if one by one they get up and leave that place, by reason of its being clear that the person remaining after the others is the guardian, it becomes a thing delivered for safe keeping (Vedi'a), with him.



Either party  
can annul  
the contract.

774. Both the person, who delivers his property for safe keeping, and the person, who accepts it to keep safely, has a right to annul the contract for safe keeping at any time he likes.

What can be  
delivered for  
safe keeping.

775. It is a condition that the thing delivered to be kept, be suitable for receipt and capable of being taken.

Therefore, the delivery for safe keeping of a bird, which is in the air, is not good.

Who can  
deliver and  
accept a  
thing for  
keeping.

776. It is a condition that the person, who delivers the thing to be kept, and, the person, who accepts it, be of sound mind and capable of contracting (Mumeyyiz, Art. 943). It is not a condition that they should be of full age.

Therefore, it is not lawful for a madman or an infant who is not capable of contracting (Art. 943), to deliver a thing for safe keeping, or, to accept a thing delivered for safe keeping. But a delivery for safe keeping, and the acceptance of a thing delivered for safe keeping by an infant, who is capable of contracting and freed from control (Me'zun), is good.

## SECTION II.

*Is about the rights and liabilities in respect of property delivered for safe keeping.*

Liability for  
loss or  
destruction.

777. The thing delivered for safe keeping is like an emanet (Art. 762), in the hands of the person who accepts it.

Therefore, if it be destroyed or wasted without any default of the person who accepts it, and without any fault in the keeping of it, it does not become necessary to make compensation.

Where  
bailee is  
paid.

But if the contract for delivery has been made for payment to be made for the safe keeping, in case it is destroyed or wasted by a cause which it is possible to guard against, it becomes a cause of compensation.

*For example.*—If a watch, which is delivered for safe keeping, is destroyed by falling accidentally from the hands of someone, compensation does not become necessary.

But if he tramples the watch under foot, or if something falls from his hands and the watch is destroyed, compensation becomes necessary.

Likewise, if, after someone has delivered his property to another, and paid him a wage for its safe keeping, it suffers damage arising from a cause which it is possible to provide against, like theft, it



becomes necessary for the person, who accepts the property to keep, to make compensation.

778. If something falling from the hands of the servant of the person, who accepts the property, destroys the property delivered for safe keeping, the servant is responsible.

Liability of  
servant of  
bailee.

779. It is a fault to do things in respect of the property delivered to be kept, if there is no permission from the owner.

Treatment  
of property.

780. The person who accepts the property to keep, takes care of it himself as if it were his own property, or causes it to be kept by someone, who is trustworthy.

Keeping of  
the property,  
by whom.

And if without fault or neglect on the part of the person entrusted by him, it is destroyed or wasted, neither the person who accepted the property to keep, nor the person entrusted by him, is liable to make compensation.

781. The person, who undertakes to keep the property, can keep it where he keeps his own property.

Where.

782. The thing delivered to be kept must be taken care of in the way which things, like it, are taken care of.

Manner of  
care to be  
taken.

Therefore, to place things like money and jewellery in places like a stable, or straw shed, by reason of its being a neglect in keeping them, if, in this case, they are wasted or destroyed, compensation becomes necessary.

783. When there are different persons who undertake to keep the thing, if the thing is not capable of division, by the leave of one the other keeps it, or, they keep it in turns, and in that case, if the thing, delivered to be kept, is destroyed without fault or neglect, neither is compelled to make compensation.

When two  
persons  
entrusted.

And, if the thing is capable of division, the persons, who accept the charge of it, divide it equally in their possession, and each one takes care of his share.

And one cannot give his share to another while the permission of the person, who delivered the thing to them, is not given. If he does give it, and it is destroyed or wasted, without fault or neglect, while in the hands of the other, the person, who takes it, is not liable to make compensation, but the person, who gave it, is liable to make compensation for his own share.

784. A condition inserted in a contract of safe keeping is observed, if the restriction is possible to be observed, if not, it is void,

Of condi-  
tions in the  
contract.



*For example.*—When an agreement for the safe keeping of a property has been made, with a condition that it must be kept in the house of the person entrusted, if a necessity has arisen for removing it to another place in consequence of a fire having occurred, no attention is paid to the condition. And in this case, when the thing entrusted is removed to another place, if it is destroyed or wasted without fault or neglect, compensation is not necessary.

Likewise, if the person, who delivers the property to keep, gives an order to the person, who accepts it, to keep the property, and forbids him to give it to his wife, or his child, or his servant, or the person who keeps his own property, if necessities, compelling him to give it to that person, arise, the prohibition is not considered.

In this case if the person entrusted gives the thing, entrusted to his keeping, to that person, and it is destroyed or wasted without fault or neglect, compensation is not necessary. And if he gives it while there is no necessity he is responsible.

Likewise, when a condition has been made for keeping in a certain room of a house, in case the person entrusted has kept it in another room of that house, if those rooms are equal for the purpose of safe keeping, the condition is not regarded.

And in this case, if the thing entrusted is destroyed, again, compensation does not become necessary.

But if there is an inequality between the rooms, like one being constructed of masonry and the other of wood, the condition is observed. The person entrusted is compelled to keep the thing in the room agreed upon. And if it is destroyed when put in a room inferior to that room as regards safe keeping, compensation is made.

785. When the owner of the thing delivered for safe custody is absent if it is not known whether he is dead or alive, the person entrusted keeps it, until the death of its owner is certain.

But, in case the thing being taken care of is one of those things, which will spoil by keeping, he sells with the leave of the judge, and can keep the price of the thing as an emanet with him. But if he does not sell and it perishes by keeping, compensation does not become necessary.

Duty of  
bailee when  
death of  
bailer  
doubtful.



786. The feeding of the thing delivered to be kept, when it has need for food, like a horse or a cow, falls on the owner; when the owner cannot be found, the person who has accepted the thing to keep, makes an application to the judge; and he orders the carrying out of arrangements which are safer and most beneficial for the owner of the thing. So that, if the letting of the thing is possible, the person, who has charge of it, lets it with the approval of the judge, and from what is received for hire he provides the food, or sells for its equivalent value. And if the letting is not possible, likewise with the approval of the judge, immediately, or, after he has provided food from his own property for three days, he sells for the equivalent value. And he can demand from the owner what he has expended for three days at the outside.

Feeding of  
thing being  
kept.

But if he has incurred expense without the leave of the judge, he cannot recover it from the person who delivered the thing to keep.

787. If there is any fault or neglect on the part of the person entrusted, and destruction or loss of value comes on the thing in his charge, compensation becomes necessary.

Fault or  
neglect.

Therefore, if the custodian destroys money, delivered for safe keeping with himself, by diverting it into his business, he becomes responsible.

In this case, when he has in this way diverted a sum of money which was an emanet (Art. 762), with him, and afterwards, after he has put in its place some of his own property, if it is lost without fault or neglect, he cannot escape liability.

And also, if, while the person entrusted goes riding an animal, delivered into his hands for safe keeping, without leave, whether by extraordinary riding, or other cause, or without cause it is destroyed, or if during the journey it is stolen, the person who undertook to keep the animal becomes responsible.

Likewise, when the person who accepts the care of the thing, is bound to remove it to another place in case of fire, if he does not remove it and it is burnt in a fire, compensation is necessary.

788. It is a wrongful act to mix the property delivered for safe custody with other property, without the leave of the owner, in case their separation from one another cannot be made,

Wrongful to  
mix.



*For example.*—When the person who has taken charge of them has mixed a quantity of gold yuzliks (T. £) delivered to him to keep, with gold yuzliks of his own, or with gold yuzliks which have been delivered by someone else to be kept, without leave, if they are destroyed or stolen, he becomes responsible.

And again if someone, other than the person who has taken charge of them, mixes the said gold coins in that way, that person is liable.

Mixing by  
leave or  
accident.

789. If the person who has undertaken the safe keeping of the thing, with the leave of the owner, mixes it with other property as mentioned in the last article, or without any act of his, two properties become mixed, in a way that they cannot be separated from one another (like a purse of gold, which has been put for safe custody in a chest, being torn, and the gold inside it being mixed with other gold), as regards the whole, the shares of the owner of that delivered for safe custody and of the custodian are up to the amounts belonging to each.

In this case, if it is lost or destroyed without fault or neglect, no compensation is payable.

Bailee  
cannot  
delegate his  
charge.

790. The custodian cannot give the thing, which is in his charge, into the custody of another, without leave. If he does, and afterwards it is destroyed, he is responsible.

And if it is destroyed by the fault or neglect of the second custodian, the owner, if he wishes, can make the second custodian compensate him, and, if he wishes, he can make the first custodian compensate him, and the first custodian recovers it back from the second custodian.

Delegation  
of charge  
by leave.

791. If the custodian has delivered the thing in his custody to the safe keeping of another, if the owner permits it, the first custodian drops out, and that person becomes custodian.

Letting,  
lending  
or pledging  
by bailee.

792. The custodian can let for hire, or lend for use, or pledge the property delivered to him to keep, just as he can use it, with the leave of the person who delivered it to him.

But if he lets, lends or pledges it, without the leave of the owner, if the thing is destroyed or perishes in the hands of the hirer, borrower or pledgee, or if there is a diminution in its value, the custodian must make compensation.

Lending or  
paying  
money by  
bailee.

793. If the custodian lends and pays money, which is an emanet (Art. 762) to another, without leave, if the owner does not permit it, the custodian is responsible for that money.



Likewise, if he has paid the debts of the owner, owed to another, with money delivered to him to keep safe personally, he is responsible.

794. When the owner of the thing, entrusted to be kept, demands it, it must be returned and delivered to himself, and the provision for the return and delivery, that is, the care and expense falls on the owner.

Return of  
thing to  
owner.  
Expense of  
return.

And if the custodian does not give up the thing entrusted to him, when the owner demands, if it is destroyed or perishes, he is responsible.

But if he does not give it up in consequence of some valid excuse, like, the thing being at a distant place at the time of the demand, in that case, if it is destroyed or perishes, it is not necessary for him to make compensation.

795. The custodian returns and delivers the thing given into his charge, either personally or by some trustworthy person.

Return how  
made.

And in case he has returned and despatched it by a trustworthy person, if, before arrival, it is destroyed or perishes, without fault or neglect, compensation does not become necessary.

796. When two persons have delivered to someone their common property to be kept, and one of those part owners, in the absence of the other, demands his share from the custodian, if the thing in his charge is of the sort Misly (Art. 145), the custodian gives him his share of the thing. If it is of the sort Qiyemi (Art. 146), he does not give it.

Return to  
one of two  
bailors.

797. In the giving back of the thing entrusted, the place, where the delivery to keep was made, is regarded.

Place of re-  
turn.

*For example.*—Merchandise, which has been delivered to be kept at Stamboul, must be returned at Stamboul, the custodian cannot be compelled to return it at Adrianople.

798. The benefits derived from a thing entrusted for safe keeping belong to the owner.

Usufruct  
belongs to  
owner.

*For example.*—When an animal is an emanet, its young, milk and wool are for the account of the owner.

799. When the owner of the thing delivered to be kept cannot be found, and the judge, on the application of a person, who has a right to support from him, has directed that provision be made for that person from the money being kept for the person who cannot be found, if the custodian diverts to the maintenance of that person, part of the money delivered to him to keep, which is in his hands, he is not liable.

Payment to  
person  
dependent  
on owner,  
in owner's  
absence.



But if he diverts the money to this purpose, without the order of the judge, he is liable.

Madness of  
bailee.

800. If madness seizes the custodian, and there is fear that he will not recover and get rid of it, and if there does not exist the property itself, which has been delivered to him to keep before his madness, the owner, on producing a satisfactory surety has a right to claim compensation from the property of the madman.

But after he has got well, if he declares, that the thing delivered to be kept was returned to its owner, or that it was destroyed, or perished without fault or neglect, he proves it by oath, and takes back the money which has been received.

Death of  
bailee.

801. When the custodian dies, in case there is clearly found to be property, delivered to him to keep, in his estate (tereke), it is returned to its owner, by reason of its being an emanet (Art. 762), also in the hands of the heirs.

But if it is not found itself in his estate (tereke), if the heirs prove that the custodian made a statement and declaration in his lifetime of the condition of the thing entrusted, as by saying "I returned that thing delivered to me to its owner" or that it was destroyed without any fault, it does not become necessary to make compensation.

Likewise, if the heirs say "we know the thing which was delivered to be taken care of. It was like this. It was like that," describing and explaining it; and if they assert that it perished, without fault or neglect after the death of the custodian, and affirm it on oath, compensation does not become necessary.

And if the custodian has not declared the condition of the thing delivered to him, by reason of its being considered that he died in ignorance, like other debts, it is paid from his estate (tereke).

Again, if the heirs say only "we know the thing which was delivered to be kept," and do not describe it, and say that it has perished, what they say has no weight. In case they have not proved the way in which it perished, compensation becomes necessary from the estate (tereke).

Death of  
bailor.

802. If the person, who delivered the thing to be kept, dies, the thing is given to his heirs, but if the estate (tereke) is submerged with debt, application is made to the judge.

And if, without making an application to the judge, the custodian gives it to the heirs, and it is destroyed, the custodian is responsible.



803. When it is necessary to make good damage to a thing delivered to be kept, if it is of the sort Misly (Art. 145), it is necessary to give a similar thing, and if it is of the sort Qiyemi (Art. 146), it is necessary to pay its value at the time when the thing happened, which is the cause of compensation being made.

Measure of damages.

### CHAPTER III.

*Is about property which is lent gratuitously to be used (Ariyyet).  
It contains two sections.*

1. Destour  
142.

#### SECTION I.

*Sets out precepts connected with the contract and condition for making a loan for use.*

804. By proposal and acceptance, and by delivery a lending for use becomes a concluded contract.

Contract  
how made.

*For example.*—If someone say to another, "I have given this property to you as a loan for use" or "I have given a loan for use" and the other say "I have accepted," or, if he takes it without saying anything, or, if one says to another "give me this property as a loan for use" (Ariyyet), and he gives it, the giving of the property as a loan for use is a completed contract.

805. The silence of the person who gives the loan is not regarded as an acceptance.

Silence of  
lender not  
consent.

Therefore, if a person asks from another for a thing as a loan for use, if the owner keeps silence, and the person takes it, he is a wrongful appropriator.

806. The lender can go back from the loan whenever he wishes.

Lender can  
revoke loan.

807. If either the lender or borrower dies, the contract for loan for use becomes annulled.

Death of  
lender or  
borrower.

808. It is a condition that the thing lent be good for profit.

What can be  
lent.

Therefore, the giving and taking of a loan of a runaway animal is not good.

809. It is a condition that the lender and borrower be of sound mind and capable of transacting business. It is not a condition that they should be of full age.

Lender and  
borrower  
who may  
be.

Therefore, the giving and taking of a loan for use by an infant, incapable of transacting business (Art. 943), and a madman is not permitted.



But the giving and taking of a loan for use by an infant released from restraint (me'zun), is permitted.

Receipt  
necessary.

810. As regards property lent for use the receipt is a condition, before receipt there is no right over it.

Thing must  
be defined.

811. The thing lent for use must be a defined thing.

Therefore, if a loan for use be made of one of two horses, without fixing which, or giving an option, it is not a good loan, and it is necessary for the lender to fix which he will lend.

But if the lender gives an option to the borrower, saying, "take whichever you like", the loan for use is good.

## SECTION II.

*Is about the rights over property loaned for use, and liability to make good loss to it.*

Right of  
borrower  
to benefit.

812. The borrower becomes owner of the benefit of the thing loaned for use, without payment.

Therefore, the lender, after the use of the property, cannot claim payment of hire from the borrower.

Liability of  
borrower.

813. The thing lent for use is an emanet (Art. 762), in the hands of the borrower.

If, without fault or neglect, it is destroyed or perishes, or if there comes loss of value, there is no necessity to make compensation.

*For example.*—If a mirror lent for use, by falling, accidentally, from the hand of the borrower, or by his knocking it himself, in consequence of his foot slipping, is broken, compensation is not necessary.

Likewise, if the value of a carpet, lent for use, is diminished by its being stained by something spilt on it accidentally, compensation is not necessary.

Fault or  
neglect of  
borrower.

814. When there has been a fault or neglect on the part of the borrower, then, from whatever cause it may be, whether the thing lent be destroyed, or its value diminished, compensation is necessary.

*For example.*—If the borrower goes in one day, with an animal lent for use, to a place two days' journey distant, and the animal is destroyed, or becomes weak and its value is diminished, compensation is necessary.

Likewise, if, when an animal is borrowed to go to a certain place, he has arrived at that place with it, and after he has gone beyond that place, the animal dies a natural death, compensation is necessary.



Likewise, if someone puts a necklace, he has borrowed for use, on the neck of an infant, and, when he has left him with no one near to look after him, that thing is stolen, if the infant is capable of taking care of things which are upon him, there is no liability, but if he is not capable of doing so, compensation is necessary.

815. The feeding of the thing borrowed for use falls on the borrower.

**Borrower must feed animal.**

Therefore, if an animal lent for use is destroyed by the borrower not providing forage for it, he is responsible.

816. When a loan for use has been made without any restriction, that is to say, in case the lender has not made any condition as to the time, and place, or any way of user, the borrower can use it at any time, or place, he wishes, and in any way he wishes. But he is bound by use and custom.

**Right of user, where no restriction.**

*For example.*—If someone has lent his horse for use, in that way without any restriction, the borrower rides it when he wishes, and to whatever place he wishes. But he cannot go in one hour to a place which is customarily a two hours' journey.

Again, in the room of an inn lent for use without restriction, the borrower, if he wishes, lives in it, and, if he wishes, he places merchandise there. But he cannot make a blacksmith's shop there if it is contrary to use and custom.

817. When the lending for use is restricted as to time and place, the restriction is to be observed, the borrower cannot act contrary to it.

**Restriction as to time or place.**

*For example.*—He cannot ride four hours on an animal lent to him to ride for three hours, and on an animal borrowed to go to one place, he cannot go to another.

818. Where a loan for use has been made and has been limited to one sort of use, the borrower cannot go beyond the use which is permitted. But he can do what is contrary to it, by using the property in a way which is equal to or less than it.

**Loan limited to one sort of use.**

*For example.*—Iron or stone cannot be loaded on an animal lent to be loaded with corn. But he can put on it a load equal to corn, or lighter than it.

Likewise, a load must not be put on an animal borrowed for riding. But an animal lent to be loaded can be ridden.

819. If a loan for use is made, which is unconditional, without fixing the person who is to use it, the borrower has a right to the use of the thing in an unrestricted manner, that is to

**Unrestricted user power to lend.**



say, if he wishes, he uses it himself, and, if he wishes, he causes another to use it by lending it to him. Whether the thing lent for use, be one which is not changed by a change of persons who use it, like a room, or whether it be one that is changed, like a riding horse.

*For example.*—When someone has said “I have lent you my room to use,” the borrower, if he wishes, stays in it himself, and, if he wishes, he causes another person to inhabit it.

Likewise, when a person has said “I have lent you this horse” the borrower, if he wishes, rides the horse himself, and, if he wishes, he makes someone else ride him.

Restriction  
as to person  
who is to  
use.

820. In the case of a thing which is changed by a change of persons using it, the fixing of the person to take benefit from it is attended to, but in the case of a thing which is not changed, it is not attended to. But if the lender has forbidden its being given to another, the borrower, while the prohibition lasts, cannot cause it to be used by another.

*For example.*—In case someone has said, “I have lent you this horse to use for your riding,” the borrower cannot make his servant ride it.

But if someone has said “I have lent you this room for you to stay in,” the borrower can both stay in it himself, and he can also make another person live in it. But he cannot, if it has been said that he is not to make another person live in it.

Choice of  
roads in user  
of animal.

821. When a beast is borrowed to go to a fixed place, if there are different roads, the borrower can go by whichever road he wishes, provided it is customarily used by people. But he is responsible if the animal is destroyed on going by a road, which is not a customary one.

Likewise, on his going by a road which is not the road fixed by the lender, and on the animal being destroyed, if the road by which the borrower goes is longer, or unsafe, or not a customary road, the borrower must make compensation.

Loan by  
wife.

822. If someone asks from a lady a thing, which is the property of her husband, as a loan for use, and she, without leave, gives it, in case that thing perishes, if it is one of those things which are in the house by custom in the hands of the wife, there is no necessity either for the wife or the borrower to make compensation. If not, if it is a thing not found in the hands of the wife, like a horse, the husband makes his wife pay compensation if he wishes, or, if he wishes, the borrower.



823. The borrower cannot let, or pledge a thing lent to him for use, without the leave of the lender. And property, which has been lent to be made a pledge for a debt in one town, he cannot pledge for a debt in another town. If he does, and the thing lent is destroyed or perishes, compensation becomes necessary.

Letting or  
pledging  
thing lent.

824. A person who has borrowed a thing for use can deliver it to another person for safe keeping. And if in the possession of a custodian, it perishes without fault or neglect, compensation is not necessary.

Borrower  
can deliver  
thing to  
another to  
keep.

*For example.*—When a man is at place with a horse which was lent to him to use, for going and returning to that place, and, the horse being tired he stops, and after he has delivered him to someone there to keep, the horse dies a natural death, compensation is not necessary.

825. When the lender has demanded the thing lent for use, the borrower must immediately return and deliver it. And if on his making delay without excuse, the thing lent for use is destroyed, or perishes, or, its price is diminished, he becomes responsible.

Return of  
thing  
borrowed.

826. The return of a thing lent temporarily, by law or by implication, at the end of the time, is necessary. But the usual delay is excused.

Time of  
return.

*For example.*—When ornaments have been borrowed to be used until the afternoon ('Asr) of such a day, on the completion of that time they must be returned and given back.

Likewise, when ornaments have been borrowed to be used at such a wedding, at the conclusion of the wedding, they must be returned and given back.

But the lapse of the customary amount of time, for the returning and giving back, is excused.

827. When a thing has been borrowed for use in a business, on the completion of that business, the thing lent becomes like a property deposited for safe keeping (Vedi'a) in the hands of the borrower. He must no longer use it. And he cannot keep it longer than it is usual to keep it. And, if he does and it is destroyed, he is responsible.

Return of  
thing lent  
for a  
particular  
purpose.

828. The borrower returns the thing, lent for use to the lender either personally, or by someone he trusts. If he returns it by someone he does not trust, and it is lost before it is delivered, he is responsible.

Manner of  
return.

829. It is necessary to deliver valuable things, lent for use like things ornamented with precious stones, to the lender himself.

Manner of  
return of  
valuables.



But with other things lent for use, sending them to a place considered delivery by use and custom, and giving them to the servants of the lender, is a return and delivery.

*For example.*—It is a delivery to put an animal, which has been lent for use, in the stable of the lender, or, to give it to his groom.

Expense of  
return.

830. The provision for, that is to say, the expense and care of returning a thing lent for use, which is in the possession of the borrower, falls on himself.

Loans for  
building and  
planting.

831. It is lawful to make a loan to erect buildings and plant trees. But the lender can cause these to be pulled down by going back from the loan.

If there has been a fixed time for the loan, and the buildings and trees have been pulled down, whatever difference there may be between their value, if they had stood to the end of the time, and their price, as pulled up, at the time when they were pulled up, the lender is responsible for it.

*For example.*—Suppose the buildings and trees had been immediately pulled up, in case their value as pulled up is twelve gold pieces, and their value if they had remained to the end of the turn twenty gold pieces, if the lender has caused the immediate pulling down, he is compelled to pay eight gold pieces.

Loan for  
cultivation.

832. When land has been lent for cultivation, whether the time be fixed or not, the lender cannot go back from the loan, and demand the return of the land from the borrower, before the time of harvest. See 3, C. L. R., 185.

Date of Imperial Irade.

24 Zi'l hajje, 1288.

## BOOK VII.

*Is about "giving" (Hibe). It contains two chapters and a preface.*

### THE PREFACE.

*Is about the technical terms used in the Sher' Law in connection with "gift".*

1. Destour,  
148.

Hibe.

833. Hibe is to give the owner-ship of property to another, without reward.

Vahib.  
Mevhub.  
Mevhub leh.

The person who gives it is called "Vahib" and the property is called "Mevhub," and the person who accepts is called "Mevhub leh."

Ittihab.

"Ittihab" also means accepting a hibe,



834. Hediyye is property brought or sent as a gift to some- **Hediyye.**  
 one.  
 835. Sadaqa is property given for a thing which is pleasing **Sadaqa**  
 to God.  
 836. Ibaha is to give leave and permission to another to eat **Ibaha**  
 and drink something without reward.

## CHAPTER I.

*Sets out precepts relating to the contract of "Gift". It is divided into two sections.*

### SECTION I.

*Sets out precepts relating to the essence and receipt of a gift.*

837. A gift, by an offer and acceptance, becomes a concluded contract, and by receipt it becomes complete. **Gift, how made.**
838. In giving, the proposal consists of words, which are used with the meaning of giving the ownership of property gratuitously, like "I have given gratis" and "I have made a gift" and "I have given." **Proposal, how made.**
- Expressions, also, which are evidence of conveying ownership gratuitously are a proposal for making a gift, like, when a husband gives a pair of earrings, or some other ornaments to his wife and says "Take them and wear them."
839. By delivery also, giving is completed. **Delivery.**
840. In a gift and in alms, sending and receipt stand in the place of a verbal proposal and acceptance. **Sending and receipt.**
841. In giving the receipt is like the acceptance in a sale. **Receipt like acceptance in a sale.**
- Therefore, if on the offer of the donor, for example, on his saying "I have given this property to you," the donee, without saying, "I have accepted" or "I have accepted the gift," receive that property at the interview for the giving, the giving becomes complete.
842. The leave of the donor for the receipt, either explicitly given, or to be inferred, is necessary. **Leave to receive, necessary.**
843. The proposal of the donor is, by inference, permission for the receipt. But his permission expressly made is an explicit order, like saying, "I have given you this property, take it", if the thing given is present at the interview when the gift is made, or saying, "I have given you such a property, go and take it", if the thing given is not present at the interview. **Leave to receive, how given.**



Leave to  
receive, how  
long good.

844. When the donor gives permission for the receipt expressly, the receipt by the donee, whether at the interview for giving, or after separation, is good. But a permission for the receipt which is inferred is limited by the interview for giving, and after separation, the receipt is not held good.

*For example.*—When it has been said, “I have given this property to you”, and the donee, also, at that meeting receives the thing off hand, the receipt is good. But if he receives it after they have separated from the meeting for making the gift, it is not good.

Likewise, when it is said, “I have given you my property at such a place,” if it has not been said, “go and take it”, on the going of the donee, his receiving is not good.

Buyer can  
give before  
receipt.

845. A buyer, before receipt from the seller, can give to another the thing sold.

Gift to a  
person in  
possession.

846. If the owner has given property to someone, in whose possession it is, by the donee saying “I have accepted,” or “I have accepted the gift,” the giving is complete. There is no necessity for delivery and receipt afresh.

Gift of debt  
to debtor.

847. If someone gives what he has to receive to his debtor, or discharges his debtor from it, and the debtor does not refuse the gift, it is good and the debt is immediately extinguished.

Gift of  
thing held  
by another.

848. If someone gives to another, what he has to receive from a third person, and gives express leave to receive it, saying “Go and take”, and the donee goes and takes, the giving is complete.

Death before  
receipt.

849. If either the donor or donee die before the receipt, the giving is void.

Gift to adult  
son.

850. When someone has given a thing to his son, who is grown up, that is to say, arrived at years of discretion, delivery and receipt are necessary.

Gift by  
guardian  
to an infant.

851. If someone who is guardian of an infant, or his tutor, that is, the person occupied in his control and education, makes a present of his property to that infant, whether the property is in his own hands, or given for safe keeping to another, by the proposal alone, that is to say, merely by his saying “I have given,” that infant becomes owner of the property. There is no need for a receipt.

Gift by  
another to a  
child.

852. When some other person has given a thing to an infant, the gift is complete by the receipt of the natural guardian or tutor.



853. If a thing is given to an infant who has understanding (Mumeyyiz, Art. 943), the gift is complete by his own receipt, even if he has a natural guardian.

Gift to an infant with understanding.

854. The gift of a thing, which is to take effect in the future, is not good.

Dependent gift.

*For example.*—It is not good, if one say, "I have given this property from the first of next month".

855. A giving, which is with a condition for compensation, is good, and the condition is to be observed.

Gift with condition for compensation.

*For example.*—When someone has made a present of something to another, with a condition for him to give this sort of recompense, or to pay a fixed quantity of a debt owing by himself, if the donee complies with the condition, the gift becomes irrevocable. If he does not, the donor can go back from his gift.

Likewise, when someone has given and delivered to another his mulk immovable property, with a condition that he is to support him while he lives, so long as the donee is content to support the donor in accordance with the above condition, if the donor repents, he cannot by going back from his gift, demand back that immovable property. See Arts. 868, 1022.

## SECTION II.

*Is about the conditions for making a gift.*

856. It is a condition that the thing given should be existing at the time of the giving.

The thing given must exist.

Therefore, a gift of the grapes, which shall be produced from a vineyard, or the young which shall be born from a mare, is not good.

857. It is a condition that the thing given be the property of the donor.

Thing must be property of donor.

Therefore, if someone, without leave, gives the property of another to a third person, it is not a good gift.

But if, after the gift has been made, the owner of the property allows it, the gift is good.

858. It is necessary that the thing given be known and fixed.

Thing must be known.

Therefore, if the donor say "I give you something from my property," without fixing it, or, "I have given you one of these two horses," the gift is not good.

But in case he has said, "let whichever of these two horses you wish be yours," and the donee, at the interview for the



giving, has designated one of them, the gift is good. But designation made after separation from the interview, is not good.

Donor must be of age and sound mind *secus* donee.

859. It is a condition that the donor be of sound mind and of age.

Therefore, the gift of an infant, madman, or imbecile, is good. But a gift to them is good.

Compulsion.

860. In giving, the approval of the donor is necessary. Therefore, if it has taken place by compulsion, or force, it is not good.

## CHAPTER II.

*Is about the consequences of a gift and is divided into two sections.*

### SECTION I.

*Is about the revocation of a gift.*

Donee is owner by receipt.

861. The donee by receipt becomes owner of the thing given.

Revocation before receipt.

862. Before the receipt, the donor can, of his own accord, go back from the gift. See 4, C. L. R., 76.

Revocation how made.

863. The prohibition of the donee to take possession, given by the donor, after the proposal, is a revocation.

Revocation after receipt.

864. The donor, after the receipt, can, with the consent of the donee, go back from the giving (*hibe*, Art. 833), and from the thing given (*hediyye*, Art. 834). And if the donee does not approve, he makes an application to the judge. And the judge can annul the giving, if there do not exist the impediments to the revocation, which will be set out in the articles hereafter. But if one of the impediments to revocation be found, he cannot annul it.

Unlawful taking by donor after receipt.

865. After the receipt, if the donor, without obtaining the consent of the donee, or a judgment in his favour from the judge, takes back the thing given from the donee, he is a wrongful appropriator. And in this case, if the thing given is destroyed or perishes in his hands, he is responsible.

Gift to relations irrevocable.

866. After a person has given a thing to his ascending or descending relation, or to his brother or sister, or their children, or to the brother or sister of his father or mother, he cannot revoke the gift.

Gift to spouse irrevocable.

867. If the husband or wife, while the marriage stands, gives and delivers something to the other, he or she can no longer go back from it.



868. When consideration has been given for a thing sent as a gift, the receipt of it by the donor is an impediment to revocation.

Gift with consideration irrevocable.

Therefore, when a thing has been given to the donor as a consideration for his gift, either by the donee, or some other person, if the donor has received it, after that he cannot go back from his gift. See Arts. 855, 1022.

869. A revocation of the gift is not good, when there is a change, in case the name of the thing given is changed, like wheat being made flour, or, when an increase which is part of the thing has been produced, as the feeding by the donee of lean animals which have been given to him, or, when the property given is a building site, the making buildings or planting trees upon it by the donee.

Revocation after change or increase.

But, when the increase is a separate thing it does not prevent revocation.

Therefore, when a mare, which has been given, has become in foal, the gift cannot be revoked, but after it has foaled, the gift can be revoked. And in this case the young remains with the donee.

870. If the donee has put the thing given out of his ownership by sale, or by gift and delivery, the right to revoke the gift, does not continue.

After transfer by donee, irrevocable.

871. If the thing given has been destroyed in the hands of the donee, there is no place for revocation.

After destruction, irrevocable.

872. The death of the donor or donee, is an impediment to revocation.

Death of donor or donee.

Therefore, on the death of the donee, the donor cannot go back from the gift, and on the death of the donor, his heir cannot demand back the thing given.

873. When a creditor has given his debt to his debtor, he can no longer go back from it. See Arts. 51 and 848.

Gift by creditor irrevocable.

874. After receipt, in no way can a revocation be made of alms giving.

Alms (Sadaqa)

875. If a person gives leave to another to eat some eatable, the latter, if he accepts that thing, cannot dispose of it in any way for which ownership is requisite, such as selling or giving it to another. But he can eat it. And afterwards the owner of it cannot claim its value.

Gift of food (Ibaha).

*For example.*—If someone, with the leave of the owner of a vineyard, eat a quantity of grapes from the vineyard, the owner cannot afterwards take the money for the grapes.



Gifts at  
weddings,  
to whom  
they belong.

876. Things brought as presents at circumcision and wedding ceremonies, if their owners said when they brought them, whether they were for the child, or the bride, or the father, or the mother, those gifts belong to that person. And if the persons who brought them do not declare for whom they are, and it is not possible to ascertain by asking them, in that case the use and custom in the town is to be followed.

## SECTION II.

*Is about the gift of a sick person.*

Donor with-  
out heirs.

877. If a man, who has no heirs, while in his mortal illness, gives and delivers the whole of his properties to someone, it is good. The Beit-ul-mal, as entrusted with his estate (tereke), cannot interfere.

Gift to  
spouse when  
no other  
heirs.

878. If a man who has no heirs, except his wife, while in his mortal sickness, gives and delivers all his properties to his wife, or a woman who has no heirs, except her husband, while in her mortal sickness gives and delivers all her properties to her husband, it is good.

And after the death of either of these, the Beit-ul-mal cannot interfere as having charge over his estate (tereke).

Gift to an  
heir.

879. If someone in his mortal sickness has given something to one of his heirs and has died, if the other heirs do not allow it, that gift is not good.

Gift to other  
than heir

But if he has made a gift and delivered it to a person who is not an heir of his, and a third of his estate is sufficient for the whole of the gift, it is good.

If it is not sufficient, and the heirs do not permit the gift, the gift is good up to the amount, for which the third of the estate is sufficient. The rest, the donee is compelled to return.

Gift by  
insolvent.

880. If someone whose estate is submerged in debt, in his mortal illness gives and delivers his properties to an heir of his, or someone else, and afterwards dies, the creditors can include that property in the dividends, and need not regard it as a gift.

Date of Imperial Irade,  
29th Muharrem, 1289.



## BOOK VIII.

*Is about taking and holding someone's property without his leave, and destruction. It is divided into two chapters and a preface. See Arts. 596-599, 771.*

## THE PREFACE

*Is about some technical terms used in the Sacred Law.*

881. Ghasb is to take and hold someone's property without his leave.

The person who takes is called "Ghasib" and the property is called "Magsub," and the owner of the property is called "Magsub Min-h".

882. Qa'iman qimet is the value of buildings and trees, to remain on the ground, where they are.

The site, first, together with the buildings or trees is taken, and, then, when free from the buildings or trees, whatever may be the difference between the two values, is called the Qa'iman qimet of the buildings or trees.

883. Mebnian qimet is the qai'man qimet (Art. 882) of buildings.

884. Maqlu'an qimet is the value of buildings, which have come to an end, after being pulled down, and of trees, which have been pulled up.

885. Mustahaqq ul qal' olarak qimet is the value remaining after deducting the payment for pulling up, from the Maqlu'an qimet, (Art. 884). See 3, C. L. R., 105.

886. "Noqsan arz" is the difference between the rent of land, which is its value before cultivation, and the rent, which is its value after cultivation.

887. "Mubashiretan itlaf" is personally to destroy a thing. The person doing the act is called "Fa'il mubashir."

888. "Tesebbiben itlaf" is to become the cause of the destruction of a thing, that is to say, as regards one thing, to perform an act, which leads to the destruction of another thing, happening in the ordinary course. The person who does the act is called "Mutesebbib."

Like the cutting of the rope of a hanging lamp. The person cutting the rope, by being the cause of the lamps being destroyed on falling to the ground, has destroyed the rope itself (Mubashiretan) and has destroyed the lamp consequentially (Tesebbiban).

Likewise, when someone splits a skin, if he destroys an oily substance, which is in the skin, and runs out, that person has destroyed the skin itself (Mubashiretan) and consequentially (Tesebbiban) the oily substance.

1. Destour,  
154.

Ghasb.

Ghasib.

Magsub.

Qa'iman  
qimet.

Mebnian  
qimet.

Maqlu'an  
qimet.

Mustahaqq-  
ul qal'  
olarak  
qimet.

Noqsan arz

Mubashire-  
tan itlaf.  
Fa'il  
mubashir.

Tesebbiben  
itlaf.

Mutesebbib.



Taqaddum.

889. "Taqaddum" is to call attention and make recommendation for the repelling and removal of an expected injury.

## CHAPTER I.

*Is about taking a person's property without leave. It contains three sections.*

## SECTION I.

*Is about the consequences of taking a person's property without leave.*

Return where made.

890. If the property taken without leave is corporeally existing, it must be returned, and delivered to its owner, at the place where it was taken.

And if the owner meets the person, who takes it, in another town and the property taken is with him, the owner, if he wishes, demands the return of the property there. If he wishes, the property to be delivered at the place where it was taken, provision for the delivery, and the expense of transport, fall on the person who took it.

Damages on destruction of thing taken.

891. When the person who takes it has destroyed the property taken, he has become irrevocably liable to make good the loss, and also, if it is destroyed, or perishes, either with his fault, or without his fault, he is responsible.

So that it becomes necessary for him to give its value at the time and place of the taking, if it is of the sort qiyemi (Art. 146), and a like thing, if it is of the sort Misly (Art. 145).

Release from liability by return.

892. When the person, who has taken property without leave has returned and delivered the corporeal property (Ayn, Art. 159), taken to its owner, at the place where he took it, he becomes free from liability.

Return, what is.

893. If the person taking the property without leave has placed the thing taken before the owner, so that he can take possession of it, even if in fact he has not received it, he has returned the thing taken.

But if the thing taken has been destroyed, and he place before the owner its value, until the owner has in fact received it, the person who took the property is not free from liability.

Return at dangerous place.

894. If the person, taking the property, deliver the property taken itself to its owner at a dangerous place, he has a right not to accept it, and the person who took it, in that case, is not free from liability.

Refusal of owner to accept value.

895. If the person, who took the property, sends the value of the property, which has been taken, and has been destroyed, to its owner, and he does not accept it, his acceptance is ordered on application to the judge.



896. In case the owner of property taken without leave is an infant, and the person who took it, return it to him, if the infant, being capable of transacting business (Mumeyyiz, Art. 913), is able to take care of the property, the return is good, if not, it is not good.

Return to  
infant  
owner.

897. If the state of the thing taken without leave changes, as when it is fruit and it becomes dried up in the hands of the taker, the owner has an option. If he likes, he demands the return of the thing itself, if he likes, he demands compensation.

Where state  
of thing  
taken  
changes.

898. If the person, who takes a thing without leave, changes some of the qualities of the thing taken by the addition of something from his own property, the owner of the property taken without leave has an option. If he wishes, he causes compensation to be made for that property, and, if he wishes, he pays the value of that increase, and demands that the thing should be corporeally returned to him.

Where the  
taker adds  
to the  
thing.

*For example.*—If the person, taking without leave, dye cloth, which he has so taken, the owner has an option. If he wishes, he causes compensation to be made for the cloth, and, if he wishes, he pays the price of the dyeing, and demands back the cloth itself.

899. If the person, taking property without leave, change the property taken in a way that will change its name, he becomes responsible, and that property becomes his own.

Change  
altering  
name of  
thing.

*For example.*—If the thing taken is wheat, and the person, taking it without leave, makes flour of it, he is responsible, and the flour becomes his property.

Also, if someone has taken without leave another person's wheat, and sown it in his field, he makes compensation for the wheat, and the crop is his.

900. If the current price and value of the thing, taken without leave, becomes less after the taking, the owner, if he does not take the thing, cannot claim the value, which it had, at the time of the taking.

Diminution  
of value  
before re-  
turn.

But if there is a diminution in the value, by the use of the person who took it without leave, compensation is necessary.

*For example.*—If an animal, which has been taken without leave by someone, is in a weak state, when returned to the owner, the person is responsible, also, for the diminution of value.



Likewise, if there has been a loss of value by the tearing of some clothes, which have been taken without leave, if the loss is small, that is to say, if it does not amount to one-fourth of the value, the person who took them without leave, is responsible for the loss of their value. And if the loss is excessive, that is to say, if it is equal to or in excess of one-fourth of the value of the clothes, the owner has an option, if he wishes, he makes the person, who took them, pay compensation for the loss of their value; and, if he wishes, he takes their full value, and abandons the property to the person, who took them.

Any conversion is a wrongful taking.

901. When the state and circumstances are in effect equal to taking without leave, as regards the putting an end to the power of disposition, it is regarded as of the same category as taking without leave. So, if a person, who undertakes to keep the property of another, denies that it is property entrusted to him, he becomes in effect a person who has taken it without leave.

And, after that, if the thing, committed to his charge, is destroyed in his hands, without any fault of his, he becomes responsible.

Accidental deprivation of property

902. If in any way, without intention the ownership of a person passes from his hands, as, when a garden which is just below another which is upon a hill is destroyed by its falling upon it, the less in value is subject to the greater. That is to say, the owner of that which is greater in value, becomes responsible for that which is less in value and is owner of that land.

*For example.*—If before the falling of the hill, the value of the garden above was 500 piastres, and the value of the garden below was 1,000 piastres, the owner of the second, on payment to the owner of the first of 500 piastres, takes possession of its place.

Likewise, when a pearl worth fifty piastres, which belongs to any one, falls, and the fowl of another worth five piastres swallows it, the owner of the pearl pays five piastres and takes the fowl. See Arts. 27, 28 and 29.

The increase of the thing taken.

903. The increase from a thing taken without leave belongs to its owner, and if the person, who took the thing, destroys the increase, he is responsible.

*For example.*—The milk and young produced by an animal taken without leave, while in the hands of the person who took it, and the fruit produced in a garden, while in the hands of a person who has taken it without leave, are the property of the owner, and if the person, who has taken possession of the animal or garden, destroys this produce, he is responsible.



Likewise also, if someone takes without leave the hives of another together with the bees which are in them, the owner, when he demands back his hives with the bees, takes also the honey which is produced, while in the hands of the person, who took without leave.

904. The honey of bees, which make their house in a garden, belongs to the owner of the garden, if anyone else takes and destroys that honey, he is responsible.

Produce of bees.

## SECTION II.

*Sets out some propositions relating to the taking of mulk immovable property without leave.*

905. If the thing taken without leave is mulk immovable property, the person, who takes it, must return it to the owner without any change or diminution.

Liability for wrongful occupation of immovables.

And if there is a diminution in the value of that mulk immovable property by the work or act of the person, who took it, he is responsible for the loss in its value.

*For example.*—If someone pulls down part of a house, which he has taken without leave, or has damaged it by living in it, if there is a diminution in its value, he is responsible for the amount of the diminution.

Likewise, if a house is burnt by a fire lighted, by a wrongful taker, in a house which he has taken without leave, he is responsible for the loss of value of the buildings.

906. If the thing, taken without the leave of the owner, is land, and if buildings are erected or trees planted upon it, the person who took the land, is ordered to pull these down and restore the land. And if the pulling down of the buildings, or trees, causes injury to the land, the owner of the land can pay their standing value, less the cost of pulling them down, and keep them.

Building or planting on other's land.

But if the value of the buildings, or trees, is greater than the value of the land, and they have been built, or planted, under an unfounded belief, that there was a legal justification, in that case, the owner of the buildings, or trees, pays the value of the land, and becomes owner of the land.

*For example.*—When someone, on a building site inherited from his father, has erected, a building, with an expenditure of money, greater than the value of that site, and, afterwards, someone turns up, who has a right to that site, the person, who made the building, pays the value of the site and keeps the site.



Cultivation  
of other's  
land.

907. If someone takes and cultivates the site of another, when the owner has demanded back his site, he recovers compensation, also, for the loss of the value of the land to let, arising from the cultivation of that person.

Cultivation  
of partner's  
land.

Likewise, if someone cultivates by himself, without leave, land held in partnership with another, when his partner has recovered his share of the partnership land, he recovers his share of the diminution of the value of the land to let, arising from the cultivation. See. 2, C. L. R., 46.

Preparing  
the field of  
another for  
fallowing.

908. After a person has taken the field of another, and prepared it for lying fallow, when the owner has taken the field, that person cannot claim a wage equivalent to the work of preparing the field for lying fallow.

Placing  
things on  
land of  
another.

909. If someone has occupied the site of another by depositing sweepings or any other thing, he is compelled to clean the site by removing the things placed there.

### SECTION III.

*Is about the person wrongfully taking property from another who has taken it wrongfully.*

Rights of  
owner when  
wrongful  
taker dis-  
possessed by  
third party.

910. A person who dispossesses a person, who has taken property without the leave of the owner, is himself like a person who takes without the leave of the owner.

Therefore, when property, taken without leave, has been taken by another person from the person who took it without leave, and has been destroyed, or, has perished in his hands, the owner, if he wishes, recovers compensation from the first person, who took, and, if he wishes, from the second person who took. And, if he wishes he can cause part of the value of the thing taken to be made good by the first taker, and part by the second taker. And in case the first taker has been compelled to make good the loss, he also claims it back from the second taker. But if the second taker has made good the loss, he cannot claim it back from the first taker.

Return by  
dispossessor.

911. When the second taker has given back the property taken without leave to the first taker, the second taker alone is free, but if has returned it to the owner, the two of them are free.



## CHAPTER II.

*Is about the destruction of a thing and contains four sections.*

## SECTION I.

*Is about one personally destroying a thing.*

*(Mubashiretan itlaf, Art. 887.)*

912. If someone destroys the property of another, whether it is in his own possession, or in the hands of someone entrusted by him with it, and whether he does it designedly, or not, he is responsible for the loss.

A person who destroys another's property is liable.

But if some other person destroys property, taken without leave, while it is in the hands of the person who took it, the owner has an option. If he wishes, he makes the person, who took the property, compensate him, and he recovers from the person who destroyed it. And, if the owner wishes, he makes the person, who destroyed the property, compensate him, and, in this case, he cannot recover from the person, who took the property wrongfully.

913. If anyone's foot slips and he falls and destroys the property of another, he is responsible.

Destruction by accident.

914. If some one destroys the property of another under the impression that it is his own property, he is responsible.

Destruction under mistake.

915. If someone pulls the clothes of another and tears them, he is liable to pay their full value. But if, on a person taking hold of his clothes, the owner pulls and tears them, the person is liable for half their value.

Both to blame.

Likewise, if someone sits on the skirts of another's clothes and the clothes are torn by the owner getting up, being in ignorance that that person was sitting on them, that person is responsible for half their value.

916. If an infant destroys the property of another, compensation must be made from his own property. If he has no property, there is a delay made until he is in a condition to pay, compensation cannot be recovered from his guardian.

Destruction by infant.

917. If someone cause any sort of loss to the property of another as regards value, he is responsible for the diminution of value.

Loss of value.

918. If someone, without right, demolish the mulk immovable property of another, like his house or shop, the owner has an option.

Damages for destruction of mulk immovables.

If he likes, he causes to be paid, as compensation, the standing value of the buildings, and makes over the materials of the



demolished buildings to the person who destroyed them. And, if he wishes, he deducts the value of the materials from the standing value of the mulk immovable property, and keeps the materials, and also recovers compensation for the remainder of the value. But if the person, who destroyed (ghasb) the immovable property, of his own accord build it as before, he is free from responsibility.

House  
pulled down  
to stop fire.

919. When someone, without the leave of the owner, has pulled down a house by reason of there being a fire in a quarter, and the fire is stopped, if he has pulled it down by the order of the Government, no compensation is necessary, and if he has pulled it down of his own accord, he is responsible.

Cutting the  
trees of  
another.

920. When someone, without right, has cut trees which are in the garden of another, the owner has an option. If he wishes, he takes the value of the trees when standing, and gives the trees which are cut to the cutter. And, if he likes, he keeps the cut trees, together with the sum of money, which remains after deducting the value of the trees, as cut, from the value, which they had, standing.

*For example.*—If the value of the garden with the trees standing is 10,000 piastres, and its value without trees is, 5,000 piastres, and the value of the trees cut is 2,000 piastres, the owner has an option. If he likes, he delivers to the cutter the trees cut, and takes 5,000 piastres, and, if he wishes, he keeps the trees cut, together with 3,000 piastres.

*Injuria non  
excusat  
injuriā.*

921. A person has no right to do wrong to another, by reason of his having been wronged.

*For example.*—As, where one person has destroyed the property of another person, in retaliation, by reason of the other person having destroyed his property, both are responsible, so, if by reason of a person of one tribe having destroyed the property of a person of another tribe, that person destroys the property of another person of the first tribe each one, who has made destruction, is responsible for the property.

So, if someone is deceived and takes bad money from another, he has no right to give it to another.

## SECTION II

*Is about damage caused consequentially (Tesebbiben itlaf,*

*Art. 888.)*

Liability for  
loss conse-  
quent on  
misfeasance.

922. If someone destroys a thing belonging to another or lessens its value consequentially (tesebbiben), that is to say, if his act is the clear cause of the destruction of a thing (mal) or the loss in its value, he is responsible.



*For example.*—On someone clutching at the clothes of another, while they are quarrelling, something falls from that person, and is destroyed or damaged, the person clutching is liable. See *Glover v. L. & S. W. R.*, L. R. 3, Q. B., 25.

And again, if someone blocks, without right, the water of the garden or field of another, and dries and destroys the sown crops and plants, or if the water overflows, and destroys the sown crops by the water flooding the lands of another, that person is responsible.

Likewise, if someone opens the door of another person's stable, and the animal, which is in it, goes away and is lost, or if he opens the door of his cage, and the bird in it flies away, he is responsible.

923. When someon's animal takes fright at another person, and goes away, and is lost, that person is not responsible. But if he frightened it purposely, he is responsible.

And again, when a sportsman fires his gun at game, and from the noise the animal of another is frightened, and, while it runs away, falls and is destroyed or hurts its foot, he is not responsible.

But if he fired the gun with the intention of frightening the animals, he is liable. See Art. 93.

924. In order that the furnishing a cause for something, in the way above mentioned, may be a reason for compensation, it is a condition that there should be an act which infringes a right.

That is to say, the liability of a person, who causes a loss consequentially, to make good the loss, is subject to the condition of his having performed an act, which led to the loss and was unlawful.

*For example.*—When someone has dug a well in a public road, without leave of the authority, and another person's animal falls into it and is destroyed, he is responsible.

But if another person's animal falls into a well, dug in his own mulk property, he is not responsible.

925. In case someone has done an act which is the cause of the destruction of a thing, if between, a voluntary act has intervened, that is to say, if some other person has himself (*Mubashiretan*) destroyed that thing, the person who did the act himself, being the controller of that voluntary act, is responsible. See Art. 90.

Liability for loss where no wrong done.

No liability unless there is an infringement of a right.

*Causa proxima.*



## SECTION III.

*Is about things which happen on the public road.*

Right of  
passage.

926. Every one has a right of passage on the public road, but on the condition of safety. That is to say, he is bound by the condition not to cause damage to another, in circumstances where it is possible to guard against it.

*For example.*—When a load which is on the back of a porter falls, if it destroys someone's property the porter is responsible. So, when a spark flies while a blacksmith is working iron in his shop, if it burns the clothes of someone passing on the public road, the blacksmith is responsible. (Note as to riding, etc. See Art. 932, 933, 937.)

Obstruction.

927. It is forbidden for anyone to sit on the public road for the purpose of buying and selling unless they have leave from the Government. Also, without leave, he cannot put anything there, or, do anything new there. And if he does, he is responsible for damage and loss which comes from it.

Therefore, if someone keeps wood or stones on a public road, and another person's animal treads on it and slips and is destroyed, that person is responsible.

Likewise, if someone drops on the public road a slippery thing like oil, and another person's animal slips and is destroyed, that person is liable.

(As to tying an animal on the public road see Art. 934. As to leaving animal loose on the public road see Art. 935).

Dangerous  
structures.

928. If a man's wall falls down and causes damage to another, there is no compensation. But if someone else says to him before, when the wall is going to fall, "pull down your wall", and calls attention to it, if time for pulling it down has passed, in that case he is liable. But it is a condition that that person is one who has a right to call attention.

So that, if that wall has fallen on the house of a neighbour, the person calling attention must be one who inhabits that house. The warning of a person from outside is of no use.

And if it has fallen on a private road, the person, calling attention, must be one of those having a right of passage over that road.

And if it falls on a public road, whoever the person may be, there is a right to call attention.



## SECTION IV.

*Is about the trespasses of animals.*

929. The owner of an animal is not liable for damage which it has done by itself. See Art. 94.

But, if while an animal destroys someone's property, the owner looks on and does not stop it, he is liable.

But when there is an animal known for doing harm, like a bull which gores, that is, an ox which gores, or a dog which habitually bites, that is, a dog which is savage, and after one of the inhabitants of the village, or place, has called the owner's attention to it, saying "Fasten up your animal," and the owner lets him go loose, and he destroys the animal or property of another, the owner is responsible.

930. If, whether a person be riding or not, while on his own land, his animal by striking with its fore feet or head or tail, or kicking with its hind feet causes damage to another person, the owner is not liable.

931. If someone has brought his animal on the land of another, if he brought him there with his leave, he is considered as on his own land, and the owner is not liable for the trespasses of the animal, in the cases set out in the above articles.

But if he has brought him on the land without the leave of the owner, whether he is riding him, or leading him, or driving him, and if he is not found near the animal, in every case the owner is liable for loss or damage caused by that animal.

But when an animal has broken loose and has entered the property of another, of his own accord, if he does damage, the owner is not liable.

932. Every one has a right to pass with an animal on the public road.

Therefore, while anyone is going on a public road, riding on his beast, he is not liable for loss or damage which it was not possible to guard against.

*For example.*—If the clothes of another are spotted by the scattering of dust or mud by the feet of an animal, or if he does harm kicking with his hind feet, or striking with his tail, there is no liability.

But if harm or damage takes place by his coming into collision, or striking with his fore feet or head, the person who is riding is responsible.

933. A person driving or leading on the public road is like a person who rides.

Owner not liable unless negligent.

Damage done on land of owner.

Damage done while on land of another.

On a public road.

Driving or leading on public road.



That is to say, they also are only responsible for damage which imposes liability on a rider.

Tying up  
animal on a  
public road.

934. No one has a right to cause an animal to stop, or to tie him up on the public road.

Therefore, if someone causes his animal to stop or ties him up on the public road, if it causes damage by striking with its hind, or fore feet, or in any other way, in every case he is liable for the trespass of that animal.

But places, which have been set aside and fixed for keeping animals, like, horse bazaars, and places for horses for hire, are excepted.

Leaving  
animal loose  
on public  
road.

935. If anyone leaves his horse free on the public road, he is responsible for any loss done by that animal.

Animal  
being  
ridden.

936. When an animal which is being ridden by a person, with its fore or hind feet, whether in his own land or another's, treads on a thing and destroys it, the person riding is looked as the destroyer himself (Mubashireten) of that thing. In every case he is liable.

Inevitable  
accident.

937. If the horse does not take the bit, and while the rider cannot hold his head, he does damage, there is no liability.

Animal tied  
in the field  
of another.

938. In case someone has tied his animal in his own field, and another person comes without leave and ties his animal there, if the animal of the owner of the property kicks and kills it, there is no liability. And if that animal kill the animal of the owner of the property, its owner is responsible.

Two persons  
tying  
animals  
where both  
have right.

939. If two persons have a right to tie their animals in a place, and, when the animals are tied there, one of them kills the other, there is no liability.

*For example.*—When two persons owning a khan in partnership have tied up their animals in one place, and the animal of one of them kills the animal of the other, there is no compensation.

Two persons  
tying  
animals  
where they  
have no  
right.

940. When two persons tie up their animals in a place where they have no right to tie their own animals, if the animal of the first person who ties, kills the animal of the other, there is no compensation necessary. But if the animal of the person, who ties afterwards, kills the animal of the first person, compensation must be made.

Date of Imperial Irade,  
23rd Rebi'ul Akhir, 1289.



## BOOK IX.

*Is about restraint, unlawful compulsion and pre-emption. It contains three chapters and one preface.*

3. Destour,  
38.

## THE PREFACE

*Explains the technical terms used in the Sher' Law in connection with restraint, unlawful compulsion and pre-emption.*

941. Hajr is to restrain a particular person from disposing of property at his will.

Hajr.

That person after the restraint is called "Mahjur."

Mahjur.

942. "Izn" is to put an end to a restraint (hajr) and the removing a prohibition of a right. The person to whom izn is given is called "Me'zun".

Izn.

Me'zun.

943. "Sagir ghayr mumeyyiz" is a young person not understanding selling and buying, that is to say, not knowing that by a sale rights of ownership are lost, and that by purchase they are acquired, and not being able to distinguish from a small deceit, a deceit which it is clear has been an excessive deceit, like being deceived five in ten.

Sagir ghayr  
mumeyyiz.

A young person who can distinguish these, is called "Sagir mumeyyiz."

Sagir  
mumeyyiz.

944. "Mejnun" (mad) is of two sorts.

Mejnun.

The first is continuously mad, which is someone whose madness covers the whole time, the other is a person who is not continuously mad, who sometimes is mad and sometimes recovers.

945. Ma'tuh is the person being so deranged in mind that his understanding is small, his speech confused, and his plan of action bad.

Ma'tuh.

946. "Sefih" is a person who wastes and destroys his property uselessly, by throwing it away, and by scattering, and squandering it in his expenses.

Sefih

Those persons, who come to be deceived in business, in not knowing the ways of work and profit by reason of their being very stupid and simple, are also considered "Sefih".

947. "Reshid" is a person who busies himself in looking after his own property, and does not desire prodigality and extravagance.

Rashid.

948. Ikrah is without right to compel a person to do a thing, without his consent, by fear,

Ikrah.



Mukreh.  
Mujbir.  
Mukreh-  
aley-h.  
Mukreh bih.

That person is called Mukreh, and the person who uses the compulsion is called Mujbir, and the thing done is called Mukreh aley-h, and the thing causing fear is called Mukreh bih.

Ikrah Mulgi.

949. Ikrah is of two sorts. The first sort is ikrah mulgi. It leads to destruction of life, or loss of a limb or one of them. It is the compulsion, which is by a hard blow.

Ikrah ghayr mulgi.

The second sort is ikrah ghayr mulgi. This causes only grief and pain. It is compulsion which is by things like a blow, or imprisonment.

Shufa.

950. "Shufa" is to acquire possession of a mulk property sold, for the amount which the property cost the purchaser.

Shefi'.

951. Shefi' is a person who has a right of Shufa (Art. 950).

Meshfu'.

952. Meshfu' is real property on which the right of Shufa (Art. 950), has attached.

Meshfu' bih.

953. Meshfu' bih is the mulk property, of the person who has the right of Shufa (Art. 950), by which there is the right of Shufa.

Khalit.

954. Khalit means a person who shares in rights over property, such as a share of water, or a share of a road.

Shurb khas.

955. "Shurb khas" is the right of taking water from running water which is reserved for a limited number of persons. But the benefit, belonging to the public, of taking water from rivers, does not belong to the class, "Shurb khas".

956. Tariq khas means a blind alley.

## CHAPTER I.

*Sets out propositions relating to restraint, and is divided into four sections.*

### SECTION I.

*Is about the classes of people who are restrained, and their rights.*

Infants,  
madmen and  
persons of  
unsound  
mind.

957. Infants, madmen and people of unsound mind (Ma'tuh) are of themselves prohibited from dealing with their property.

Prodigal.

958. A person who is prodigal (Sefih) can be prohibited by the Judge.

Debtor.

959. A debtor also, on the application of his creditors, can be prohibited from dealing with his property by the Judge.

Effect of  
restraint  
on persons  
above  
mentioned.

960. Verbal dispositions, like buying and selling, made by the prohibited persons mentioned in the above articles are not held good. Although they are liable to make compensation at once for damage or loss arising from their acts.



*For example.*—When an infant has destroyed someone's property, although the infant is not capable of transacting business, he is responsible.

961. When a prodigal person, or a debtor, are restrained by the judge, witnesses are called and publication made, to make known to the world the causes of the prohibition.

962. It is not a condition that the person should be present, who is intended to be restrained by a judge, and an order to restrain him, made in his absence, is good.

But it is a condition that notice of the injunction should reach that person.

As long as information of the prohibition made has not reached that person, he is not prohibited, and his contracts and admissions made up to that time, are of force.

963. A person who is wicked is not put under restraint by reasons of his wickedness only, so long as he has not wasted and squandered his property.

964. Some persons also, who are a public harm, like, an unskilled doctor, are restrained.

But the result, intended from prohibiting in this matter, is a restraint from acting, it does not mean a restraint from verbal ways of employing property.

965. When someone carries on an art or trade in a bazaar, the persons, employed in that art, or trade, cannot restrain and prohibit that person from carrying it on, on the allegation, that it is detrimental to their work and profits.

## SECTION II.

*Sets out some precepts relating to infants, madmen and people of unsound mind.*

966. When an infant has not understanding for business (Art. 943). even if his guardian give him permission, his verbal dispositions of property are fundamentally invalid.

967. The dispositions made by an infant capable of transacting business (Art. 943), which are purely for his own benefit, like, the acceptance of the making of a gift, or, a present, even if there be no leave, or permission from his guardian, are held good. And dispositions which are purely a damage to him, like giving something to another, even if there be leave and permission from his guardian, are not held good.

But his contracts which he contracts, which may be either for his loss or benefit, are concluded, subject to the assent of his guardian. And his guardian also has an option either to give, or

Publication of restraint.

Notice to person restrained.

Not a wicked person.

People who do public harm.

Not a trade rival.

Infant ghayr mumeyyiz.

Infant mumeyyiz.



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Infant mumeyyiz.

But his contracts which he contracts, which may be either for his loss or benefit, are concluded, subject to the assent of his guardian. And his guardian also has an option either to give, or



not to give, his assent. So that if he sees that it is useful for the infant, he allows it, and if he does not see that it is so, he does not allow it.

*For example.*—If an infant who understands business (Art. 943), sell a property without leave, even if he has sold it for a price greater than its value, its being a Bey' Nafiz (Art. 113), is dependent on the leave of the guardian, because the contract of sale is one of those contracts, as to which it is doubtful, whether they will be beneficial or injurious originally.

Power of guardian to enfranchise infant.

968. The guardian can give leave to an infant, who understands business, to trade, by handing him a quantity of his property for trial, and if he proves capable of managing his own affairs, he delivers him the rest of his property.

Proof of authority to infant.

969. Repeated contracts, which are evidence of there having been formed an intention to make profit, are leave to trade.

*For example.*—The saying of the guardian to the infant "Trade," or "Buy and sell property of such a sort," is construed as leave to trade.

But his ordering him to carry out one contract only, as, his saying "Sell such a thing" or "Buy such a thing from the bazaar," is not considered leave to trade, but he is considered as taking that infant into his service as agent, according to use and custom.

Authority to infant cannot be limited.

970. The leave of the guardian cannot be limited, or bound by time, or place, to one sort of trading.

*For example.*—If he give leave for a day or a month, the infant understanding business (Art. 943), is free generally, and he becomes perpetually free, so long as his guardian has not imposed a restraint on him.

And again, if he say, "Buy and sell in such a market," the infant is free to trade in every place.

Likewise, if he say, "Buy and sell such a sort of property," the infant can buy and sell every sort of property.

Infant, implied authority to trade.

971. In the same way as leave can be expressly given, so it can be inferred from evidence.

*For example.*—If his guardian see an infant, who understands business (Art. 943), trading, and keeps silence and does not prohibit him, there is permission by inference.

Effect of authority to infant to trade.

972. When leave has been given to an infant by his guardian, in matters included in that leave, he is in the position of a grown up person, and his contracts, like sale and letting, are held good.



973. A guardian, who has given permission to an infant, can, afterwards by prohibiting him take it away. But it is condition that in whatever way he has given leave he must prohibit him in that way again.

Infant, withdrawal of authority to trade.

*For example.*—When his guardian has given general leave to an infant to trade, and he would prohibit him, after it has been made known to the people of his bazaar, when he makes the prohibition also in this way general, it is a condition to make it known to the majority of the people of that bazaar.

On the other hand a prohibition given in his own house, in the presence of two or three persons, is not good.

974. In this chapter, an infant's guardian is first, his father, secondly, if his father is dead, the guardian chosen, that is to say, the guardian who has been chosen and appointed in the lifetime of his father, thirdly, if the guardian chosen is also dead, the guardian appointed by him in his lifetime, fourthly, his true ancestor, that is to say, the father of the infant's father, or the father of the infant's father's father, fifthly, the guardian who has been chosen and appointed in the lifetime of his ancestor, sixthly, the guardian who has been appointed by that guardian, seventhly, the judge, or the guardian appointed, that is to say, the guardian appointed by the judge.

Infant, who is guardian of.

But the giving of permission by a brother, or fraternal uncle, or other near relative, is not legal, if he has not been appointed guardian.

975. When the judge has seen benefit in the management of his affairs by an infant capable of managing them, if the guardian who is prior to him refuses permission, in that case the judge can give permission to that infant, and the other guardian can no longer prohibit him.

Power of judge to enfranchise infant.

976. On the death of the guardian, the permission, which has been given to an infant, who has received permission, is void. But the permission of the judge is not avoided by his death or dismissal.

Death of guardian, effect of.

977. A judge or his successor, can again put under restraint an infant who has been freed from restraint by that judge.

Power of judge to revoke authority.

On the other hand, the father, or other guardian of the infant, cannot put him under restraint on the death or dismissal of the judge.

978. A person whose intellect is deranged (Art. 945), is in the same condition as an infant capable of transacting business.

Person of unsound mind.



Chronic  
madman.

Intermittent  
madness.

Effect of  
infant  
becoming  
of age.

Conse-  
quence of  
handing  
property to  
infant of  
age before  
it is right.

Restraint of  
prodigal.

Age of  
puberty.

Beginning  
of puberty.

Murahiḡ.

Puberty  
after fifteen  
years of age.

Statement of  
infant not  
accepted as  
to age.

979. A person continuously mad (Art. 944), is in the same condition as an infant incapable of transacting business.

980. The transactions of a person not continuously mad, done while he is in a state of convalescence, are like the dispositions made by a sane person.

981. When a child has reached the age of puberty there must not be haste in delivering him his property. He must be tried by delay.

If he turns out to be a man who looks after his property (Art. 947), then his property is given to him.

982. If a child reaches the age of puberty and is not a person who looks after his property (Art. 947), his property is not given to him, until he turns out to be a person who looks after his property, and he is restrained from disposing of it as before.

983. When his property has been given to an infant by his guardian, before it is proved that the infant is a person who looks after his property (Art. 947), if the property perishes in the hand of that infant, or if the infant destroys it, the guardian is responsible.

984. When his property is given to an infant on his reaching the age of puberty, if it is shown afterwards that he is a person who wastes his property (Sefih, Art. 946), he is prohibited from dealing with the property by the order of the judge.

985. The time of puberty is proved by the emission of seed in dreams and the power to make pregnant, and by the mensual discharge, and power to become pregnant.

986. The beginning of the time of arrival at puberty is, for males, exactly twelve years of age, and, for females, exactly nine years, and the latest for both is exactly fifteen years of age.

And if a male, who has completed twelve, and, a female, who has completed nine, has not reached a state of puberty, until they reach a state of puberty, they are called "Murahiḡ" and "Murahiḡ-h".

987. A person in whom the signs of puberty do not appear, when he has reached the latest time for arrival at puberty (Art. 986), is considered in law as arriving at the age of puberty.

988. If an infant who has not arrived at the beginning of the time of the arrival at puberty (Art. 986), bring an action, saying "I have arrived at the age of puberty", it cannot be accepted.



989. If a "Murahiq" or a "Murahiq-h" (Art. 986), has admitted before a judge that he or she has arrived at the age of puberty, if his or her apparent condition declares it to be false, by reason of there not being an arrival of his or her body at the age of puberty, this admission of his is not confirmed, and if his or her apparent condition does not contradict the statement that his or her body has arrived at a state of puberty, the admission is confirmed, and his or her contracts and admissions are Nafiz (Art. 113), and are given effect to.

Admission  
of a  
murahiq.

And if, after a time, he says "I at that time, that is to say, at the time of the confession, had not arrived at the age of puberty" and he claims to set aside his verbal transactions which took place after the confession, no attention or regard is paid to him.

### SECTION III.

*Is about a person who wastes his property who is prohibited from disposing of it.*

990. A person who wastes his property and is prohibited from dealing with it, is, as regards his transactions, like an infant capable of looking after his property (Mumeyyiz).

Prohibition  
of prodigal—Effect  
on person.

But the judge alone is guardian of the spendthrift, there is no right of guardianship for the father, or forefathers, or the guardians appointed by them.

Judge alone  
guardian.

991. After prohibition, as regards the transactions of a spendthrifts, his verbal dispositions of property are not valid, but his dispositions, made before the prohibition, are like dispositions made by other persons.

Effect on  
transactions.

992. What is necessary, for the support of his family and himself, is expended from the property of the spendthrift who is prohibited.

Necessaries.

993. If the spendthrift, who is prohibited, sell a property belonging to him, the sale is not Nafiz (Art. 113), if the judge sees benefit in it, he gives permission.

Sale by.

994. The admission, made by a spendthrift of a debt to another, is absolutely no good, that is to say, there is no effect produced by his admission as regards property, whether it existed at the time when the prohibition was made, or, whether it came into existence afterwards.

Admission  
by prodigal  
person.

995. The claims of people upon a spendthrift, who is prohibited, are paid from his property.

Claim on  
prodigal.



Borrowing  
by prodigal.

996. If a spendthrift who has been prohibited borrows money and spends it on his own maintenance, if an amount which is usual has been spent, the judge pays that money from the property of the spendthrift.

And if more has been spent, the judge reckons the quantity necessary for the maintenance of the spendthrift, the rest of it is disallowed.

Removal of  
prohibition.

997. When the spendthrift has come to a fit state, the prohibition is dissolved by the judge.

#### SECTION IV.

*Is about a debtor who is prohibited from dealing with his property.*

Debt or,  
who will not  
pay.

998. When it is clear to a judge that a debtor is putting off paying his creditors, while he has the means to do so, and the creditors demand from the judge the sale of his property, and payment of his debts, the judge prohibits him from dealing with his property.

And if the debtor himself refuse to sell his property, and pay his debts, the judge sells his property and pays his debts. He proceeds by beginning with the more advantageous and easier for sale as regards the debtor ; and afterwards putting forward the more easy according to this order.

First, beginning with the cash, and, if it is not sufficient, then other property (Aruz) and, if the other property is also not sufficient, he sells his immovable mulk property.

Insolvent  
debtor.

999. When a debtor is insolvent, that is to say, when his debts are equal to or greater than his property, if his creditors are afraid of there being waste of his property by trading, or of his smuggling away his property, or of his passing it to the benefit of another, and make an application to the judge, demanding that he be prohibited from making any disposition of his property, or making admission of a debt to another, the judge prohibits that person, and sells his property, and divides the proceeds among the creditors. But one or two suits of clothes are left for the debtor himself. But if that debtor's clothes are costly, and there can be sufficient with inferior clothes, those clothes also are sold, and from their price, a cheap suit of clothes is bought for the debtor, and the balance is paid to his creditors.

Likewise, when he has a large house, and an inferior one is sufficient for him, that large house is sold, from its price a



habitation suitable for his state is bought and the balance is paid to the creditors.

1000. During the time when an insolvent debtor is under prohibition both himself, and those, whose maintenance necessarily falls on him, are supported out of his property.

1001. Prohibition on account of debt only affects property existing at the time of the prohibition of the debtor, but it does not apply to property passing into his hands after the prohibition.

1002. Whatever may lead to the destruction of the rights of the creditors, like a gift, alms or the sale of property for less than the equivalent value, that the prohibition affects.

Maintenance of insolvent debtor.

Does not affect after acquired property.

Effect on transactions.

Therefore, the contracts of an insolvent debtor, which cause damage to the rights of the creditors, and other dispositions of property, and his gifts to vaqfs, as regards property which existed at the time of the prohibition, are not held good. But they are held good as regards property acquired after the prohibition. And when he has admitted that he owes a debt to another, it is not held good as regards property, which existed at the time of the prohibition, but it is held good after the cessation of the prohibition, and at that time he continues a debtor for the payment. And again, an admission for payment to be made out of property, if he acquires it after the prohibition, is Nafiz (Art. 113).

## CHAPTER II.

### *Is about wrongful compulsion.*

1003. It is a condition that the person, who uses compulsion, should be able to cause what he threatens. Therefore, the compulsion of a person who is not able to cause and do what he threatens is not considered.

Ability to perform threat.

1004. It is a condition that the person compelled should be afraid of the taking place of the thing, which causes his fear, that is to say, that he should have formed a preponderant opinion in his own mind, that the person, using compulsion, would do the thing threatened, if he did not do the thing he was compelled to do.

Belief in threat.

1005. If the person compelled, do what he is compelled to do, in the presence of the person, who uses compulsion, or his agent, the compulsion is considered.

Presence of person using compulsion.

But, if he do it in the absence of the person who uses compulsion, and in the absence of his agent, the compulsion is not



considered, by reason of his having acted with willing submission, after the removal of the compulsion.

*For example.*—When after someone has used compulsion to induce anyone to sell his property to another, the person, against whom it is used, goes away, and sells his property in the absence of that person, and when there is no agent on his part, the violence is not considered, and the sale is good and effect is given to it.

Effect of  
compulsion  
verbal  
transactions.

1006. When they take place in consequence of compulsion which is taken into consideration, an exchange of property for property, and a purchase, and a letting, and a conveyance, and a compromise about property, and an admission, and a postponement of a debt and the causing of a right of pre-emption to cease, are not held good, whether the compulsion be mulgi (Art. 949), or ghayr mulgi (Art. 949).

But if the person compelled give his consent after the compulsion has ceased, in that case they are held good.

Wrongful  
acts only  
excused by  
threats of  
great harm.

10 7. Compulsion, which is mulgi (Art. 949), like as it is considered in transactions by word as above said, so also it is considered in transactions by deed. But compulsion, which is ghayr mulgi (Art. 949), is considered only in verbal transactions, in transactions by deed it is not considered.

Therefore, if someone say to another, "Destroy the property of such a one, if you don't I will kill you or cut off one of your limbs," and the person, against whom the compulsion is used, destroys it, the compulsion is taken into consideration, liability can be enforced against the person using the compulsion alone.

But if he say, "Destroy the property of such a one, if you do not, I will strike or imprison you." If that person does destroy it, the compulsion is not taken into consideration, it is necessary for the person, who destroys the thing, alone to make compensation. Note.—As to what are verbal transactions and what are transactions in deed. See also Art. 1713.

### CHAPTER III.

*Is about pre-emption. It is divided into four sections.*

#### SECTION I.

*Is about the grades of pre-emption (Shufa).*

1008. There are three grounds for the acquisition of mulk property sold, for the amount which the property cost the purchaser (Shufa).

3. Destour,  
p. 47.

Part-owners,  
sharers in a  
right at-  
tached  
adjoining  
owner are  
entitled.



The first is to be a part-owner of the thing itself sold. Like two persons having undivided shares in mulk immovable property.

The second is to be a person who shares in a right (Khalit) attached to the thing sold, like owning in common a right of Shurb khas (Art. 955), and Tariq khas (Art. 956). Note.—As to Shurbk has. See Art. 1239.

*For example.*—When several gardens share in a right of Shurb khas (Art. 959), and one of them is sold, all the owners of the other gardens become entitled to buy the garden sold at the price for which it was sold, whether they are adjoining neighbours or not.

Likewise, when a house is sold, whose door opens on a blind alley, the whole of the owners of the other houses having their doors on that blind alley have together the right to purchase the house sold, for the price at which it was sold, whether they are adjoining neighbours or whether they are not.

But when a house is sold, which is one of those houses which take water from a river which is for the public benefit, or whose door opens on a public road, there is no right of pre-emption for the owners of the other houses, which take water from that river, or the doors of which are on that public road. See Art. 1239.

The third ground is the being a neighbour adjoining to the thing sold.

1009. First, the right of pre-emption belongs to the person who is part-owner of the thing sold, secondly, to the person who shares in rights, in which the thing sold shares, thirdly, to the adjoining neighbour.

Priority.

And when the first claims the right of pre-emption, the others cannot, and when the second claims it, the third cannot do so.

1010. If there is no joint owner of the thing itself sold, or if there be one and he has relinquished his right of pre-emption, and if there is a person who has a share in a right (Khalit, Art. 954), in which the property sold shares, he has a right of pre-emption, and if there be no person having a share in such a right, or if there be such a person and he relinquishes his right, in that case, the adjoining neighbour gets the right of pre-emption.

Priority.

*For example.*—When someone has sold his immovable property which is absolutely his own mulk, or a part-owner sells his undivided share in immovable property and his part-owner relinquishes his right of pre-emption, if there is someone sharing a right of taking water (Art. 955), or in a blind alley (Art. 956)



which that property has, the right of pre-emption belongs to him. If not, or if there be and he relinquishes his right of pre-emption, in that case the right of pre-emption belongs to the adjoining neighbour.

Upper and lower storey.

1011. In case the upper storey of a house is the mulk property of one and the ground floor the mulk property of another, they are considered as adjoining neighbours, the one to the other.

Party walls.

1012. A person who is joint owner of the wall of a house is in the same position as a joint owner of the house. But if the beams of his own house are extended on to the walls of his neighbour's house, he is considered an adjoining neighbour.

By there merely being a right to place the ends of his beams upon that wall he is not considered a part-owner or as a person sharing in rights over property (Khalit, Art. 954).

Rights *inter se* of those having right of pre-emption.

1013. When there are numerous persons, who have a right of pre-emption, attention is paid to the number of persons, to the amount of the share, that is to say, to the quantity of their shares, attention is not paid.

*For example.*—In a case where a half share of a house belongs to one person, and a third share, and a sixth share belong to two other persons, if the owner of the half share sells his share to another, and the others claim as having a right of pre-emption, it is divided in equal shares between them. The owner of the one-third share cannot claim a greater share, according to his share.

Special and general rights over property.

1014. When two sorts of persons, having shares in rights over property come together, the more special is preferred to the more general.

*For example.*—When a garden is mulk and has a right to take water (Hagg shurb, Art. 143), from a channel opening from a small river, and the garden is sold with the right to take water, those who have a right to take water in that channel are preferred as regards the right of pre-emption. But if a mulk garden which has a right to take water (Art. 143), in that river is sold with the right to take water, all those who have a right to take water, whether from the river or from the channel, have a right of pre-emption. See Art. 1239.

Likewise, if a mulk house is sold, the door of which opens, on a blind alley, which branches from another blind alley, only the owners of houses whose doors open on the branch alley have a right of pre-emption. But when a house is sold, the door of



which opens on the principal blind alley, all those who have a right of passage, either over the principal or branch blind alley, have a right of pre-emption.

1015. If the owner of a garden, which has a right of taking water, (Shurb khas, Art. 955), does not sell his right of taking water, and only sells that garden, those, who have shares in the right of taking water, cannot have a right of pre-emption. Tariq khas (Art. 956), is analogous to this.

Where seller reserves right to take water.

1016. The right to take water is preferred to the right over a road.

Therefore, when a garden is sold, if there be someone who shares in its right of taking water (Shurb khas, Art. 955), and someone who shares in its right of way (Tariq khas, Art. 1956), the owner of the right of water is preferred to the owner of the right of road.

Person with right to take water, preferred to person with right of way.

## SECTION II.

*Is about the conditions for the acquisition of property from the purchaser for the price which he paid for it.*

1017. It is a condition that the thing, which there is a right to purchase, should be immovable mulk property.

Immovable mulk property, must be.

Therefore, the right of pre-emption is not allowed in respect of ships, and other movable property and in respect of immovable property which is vaqf, or arazi-mirie. (Compare Art. 1020).

1018. It is a condition also that the property, in respect of which the right is claimed, should be mulk property.

Mulk property right must be in respect of.

Therefore, when a mulk property is sold, the Muteveli or possessor of immovable vaqf property, which adjoins, cannot have a right of pre-emption.

1019. Mulk trees or buildings, which are upon vaqf land, or arazi-mires being in the same position as movables, as regards them acquisition by pre-emption is not allowed.

Mulk trees and buildings on vaqf, or arazi-mirie.

1020. Acquisition by pre-emption is allowed in respect of buildings and trees, as subject to the land, when a mulk building site is sold together with the trees and buildings upon it.

Buildings and trees as subject to the land.

But it is not allowed in case the trees or buildings have been sold alone.

When sold alone.

1021. Pre-emption is established by a contract of bey' (Arts. 105, 120), alone.

Must arise from bey'.

1022. A gift with a condition for compensation is like a bey' (Arts. 105, 120).

Gift for reward is like a bey'.

Therefore, if someone gives and delivers his mulk house to



another, with a condition for compensation, the adjoining neighbour has a right of pre-emption. See Art. 855.

Transfer without consideration.

1023. Pre-emption is not allowed in respect of immovable property transferred to another without price, like a gift, or inheritance, or bequest.

Consent to sale destroys right.

1024. It is a condition that there be no consent, express or implied, of the person, who has the right of pre-emption, to the sale taking place.

*For example.*—If he says, when he hears of the sale, "Very well", his right of pre-emption is destroyed. After that he cannot claim his right to buy the thing for the price at which it was sold.

Assent subsequent to sale.

And again, if, after he has heard of the contract of sale, he asks to buy or rent the property from the purchaser, his right, to buy it, is destroyed.

Agent to sell.

Likewise, a person can have no right of pre-emption in respect of immovable property, which has been sold when he was agent for the seller. See Art. 100.

Price must be property.

1025. It is a condition that the price should be property (mal, Art. 126), of known amount.

Therefore, pre-emption, is not allowed in respect of immovable property transferred for a price, which is not property (mal, Art. 126).

*For example.*—There is no right of pre-emption in respect of a mulk house, given as rent for the hiring of a bath.

Because in this case the price of the house is rent, which is of the class benefit (menafi) and is not property (mal, Art. 126).

Likewise, there is no right of pre-emption in respect of immovable property given as a marriage portion.

Ownership must pass.

1026. It is a condition that the ownership of the seller in the thing sold no longer exists.

Therefore, in a bey' fasid (Art. 109), so long as the right of the seller to demand the thing back is not put an end to, there is no right of pre-emption; and when there is a sale with a stipulation for an option, if the purchaser alone has the option, there is a right of pre-emption, but if the seller has a right of option, until the right of option is put an end to, there is no right of pre-emption.

But by option for defect, or option on inspection, there is no impediment to the assertion of a right of pre-emption. See 1, C.L.R., 21, 2, C.L.R., 93, 4, C.L.R., 58.



1027. Pre-emption does not come into force on the division of immovable property.

*For example.*—When a house held in common is divided between the joint owners, the adjoining owner cannot have a right of pre-emption.

Partition does not give right.

### SECTION III.

*Is about claiming the right of pre-emption.*

1028. As regards pre-emption, three demands are necessary, a claim made immediately (Taleb muwasebe, Art. 1029), a claim made formally and before witnesses (Art. 1030), and a claim by action for possession (Art. 1031).

Three demands.

1029. It is necessary for the person, who has the right to pre-emption immediately, at the meeting where the contract of sale is completed, to say something, which is evidence of his claim to take the property.

First claim.

Such as "I have a right of pre-emption over the thing sold," or, "I claim by right of pre-emption."

This is called Taleb muwasebe. See 1, C.L.R., 21.

1030. After the claim Muwasebe (Art. 1029), the person having the right must make a claim formally and before witnesses, (Taleb taqir veish-had).

Second claim.

Thus, it is necessary for him to say, in the presence of two persons, being near the thing sold "I believe such a one has bought this immovable property," or in the presence of the purchaser, "I hear you have bought such an immovable property," or, if it be still in the hands of the seller, "I hear you have sold such a property to such a one," therefore, I am entitled to take it at the price at which it was sold or "I claim to take it at the price at which it was sold." "Now also I claim it. Be witnesses."

And if the person, who has the right of pre-emption, is in a distant place, and cannot in person in this way make his demand formally and before witnesses, he appoints someone his agent, and if he cannot find an agent, he sends a letter. See 1, C.L.R., 21.

1031. After the claim made formally and before witnesses, the person, who has the right to take the property, must make a claim, and bring an action before the judge.

Third claim.

This is called a claim by action for possession (Taleb khusumet ve temelluk).

1032. If the person, who has a right to take the property, delays in making the immediate claim (Art. 1029), for example, if

Delay in making first claim.



he does not claim to take the property at the meeting, at which the sale is concluded, and is in circumstances which are evidence of his being disinclined for it, like his being engaged by other business, or, by another discussion for another purpose, or, if he goes away from that meeting before he has made a claim to take the property, his right to take the property is put an end to.

Delay in making second claim.

1033. If the person, who has the right to take the property, delays in his formal demand before witnesses (Art. 1030), after there has passed time sufficient for him to act, although it be by letter, his right to pre-emption is destroyed.

Action must be brought in one month.

1034. If the person, who has a right to take the property, after the formal claim before witnesses, while there is no legal excuse, like being in another country, delays for one month his claim by action, his right to take the property is put an end to.

Person under disability.

1035. The guardian of a person, who is under restraint, makes the claim for his right to pre-emption.

And if the guardian of an infant does not claim his right of pre-emption, he has no right to claim pre-emption after he has come of age.

#### SECTION IV.

##### *Is about the consequences of pre-emption.*

Person whose right is proved is owner.

1036. A person, who, by the admission of the purchaser, or, the decision of the judge, has a right to acquire the property sold, becomes owner of the property upon which the right has attached.

Same conditions as on sale.

1037. To take a mulk property by pre-emption is like buying it in the first instance.

Therefore, rights, which are established on a sale in the first instance, are established also by a sale by pre-emption, such as, the option to return on inspection, and the option to return for defect.

Death of claimant after demand and before decision.

1038. If after the immediate demand (Art. 1029), and the formal demand before witnesses (Art. 1030), and before he has become owner of the property, by the admission of the purchaser, or, the decision of the judge, the person who has the right of pre-emption dies, the right of pre-emption does not pass to his heirs.

Sale of claimant's property before decision

1039. If after the two claims by the person having a right to pre-emption, and before he has become owner of the property in the way explained (see Art. 1036), he sell the property by which he has his right, his right of pre-emption is destroyed.



1040. If another mulk property, adjoining the property subject to pre-emption, is sold, before the person entitled to pre-emption has become owner of the property to which his right of pre-emption has attached, he cannot have a right of pre-emption over this second property.

Property claimed does not confer a right of pre-emption until ownership has passed.

1041. The right to take by pre-emption does not admit of division.

Claimant cannot take part.

Therefore, on the abandonment of part of a property subject to pre-emption, there is no right to take another part.

1042. Some of those, who have a right to take by pre-emption, cannot give their right to others of them. If they do, their right of pre-emption is destroyed.

Joint claimants.

1043. If, before the decision of the judge, one of those, who have a right to take by pre-emption, destroys his right, the other person with a right of pre-emption can take the property subject to pre-emption entirely.

Where one has lost his right.

But if, after the decision of the judge, one of the parties entitled to take by pre-emption destroys his right, the other person entitled to take by pre-emption cannot take the right of the first.

1044. If the purchaser add something from his own property, like painting a building subject to pre-emption, the person with a right of pre-emption has an option, if he likes he abandons, if he wishes, he takes the property subject to pre-emption on payment of the price of the building together with the value of the addition.

Improvements by purchaser.

And if the purchaser has made buildings on the property subject to pre-emption, or, has planted a tree, the person with the right of pre-emption has an option, if he wishes, he makes abandonment, if he wishes, he pays the value of the buildings, or trees, together with the price of the immovable property subject to pre-emption, and takes the property subject to pre-emption. On the other hand, he cannot compel the purchaser to remove the buildings or trees.

Date of Imperial Trade,  
25th Zilqade, 1289. Kianon Evvel, 1288.



## BOOK X.

3. Destour,  
55.

*Is about the different sorts of Shirket, (Art. 1045), and contains a preface and eight chapters.*

## THE PREFACE.

*Is about some technical terms used in the Sher' Law.*

Shirket.

1045. "Shirket" is a thing's being originally special to more persons than one, and the distinction of those persons from others by that thing.

But it is used also, both by custom and in technical language, with the meaning of "Shirket" by agreement, which is a cause of becoming special in that way.

Therefore, "Shirket" is generally divided into two classes.

Shirket-i-mulk.

One is Shirket-i-mulk (Art. 1060) which results from one of the ways of acquiring property, like purchase and the acceptance of a gift.

Shirket-i-aqd.

The other is Shirket-i-aqd (Art. 1329), which results from the proposal and acceptance between the part-owners.

Of these two, the details are given in their special chapters.

Shirket Ibaha.

And moreover, besides these, there is "Shirket Ibaha," which is the existence of a mutual possession by the public, of a share in the right to acquire possession, by taking things which are free to the public, that is to say, things, like water, which are not the property of people, originally.

Qismet.

1046. Qismet means "partition". Its description and details come in a special chapter.

Ha'it.

1047. Ha'it means a wall, and a partition of boards, and a fence of brushwood.

The plural is hitan.

Mareh.

1048. Mareh, in its general estimation, is person who pass along the public road.

Qanat.

1049. Qanat is the pipe and the underground channel, which will make water flow in land.

The plural becomes "qanawat".

Musennat.

1050. "Musennat" means a boundary, and a water dam, and the edges of a water channel.

The plural is musenniat.

Ihya

1051. "Ihya" means the improving of a place. It is to make land serviceable for cultivation.

Tahjir

1052. Tahjir is to put a stone and other things on the boundaries of land, so that other persons may not lay hands on it.



1053. Infaq is to spend property. Infaq.
1054. Nafaqa are things like money and provisions and corn to be expended on necessities and maintenance. Nafaqa.
1055. Taqabbul is to make oneself responsible for, and to take upon oneself a work. Taqabbul.
1056. Mufavisin means persons who make a contract of partnership on equal terms (Art. 1331). Mufavisin.
1057. Ra'is el mal means the stock or capital of a business. Ra'is el mal.
1058. Rib-h means benefit and result of work. Rib-h.
1059. Ibda' is a person's giving his capital to another, upon the terms, that the profit from it is to come entirely to himself. Ibda'.
- The capital is called bida'a. The person who gives it is called mebdi' and the person who takes it mustebdi'. Bida'a.  
Mebdi'.  
Mustebdi'.

## CHAPTER I.

*Is about Shirket-i-mulk (Art. 1045), and contains three sections.*

### SECTION I.

*Sets out the description and divisions of Shirket-i-mulk.*

1060. Shirket-i-mulk is a thing's being common to more persons than one, that is to say, a thing's being special to them, by a cause which is one of the causes of acquiring ownership, like purchase, and the receipt of a gift, and the acceptance of a bequest and inheritance, or by the mixing of properties (mal), that is to say, by causing properties to mix with one another in a way that they cannot be separated, or by the mixing of properties with one another in that way. Joint ownership defined.

*For example.*—If two persons have purchased a property, or someone has made a gift or bequest to them and they have accepted it, or a property is inherited by two persons, that property becomes common between them. And every one of those, who are share-holders in that property, participates with the others in it.

Likewise, if two persons mix together their stores of corn, or, in some way, like there being holes in the sacks, the stores of corn of two persons mix together, the mixed or compounded store of corn becomes common property between the two of them.

1061. If a gold coin of someone gets mixed with two gold coins of the same sort belonging to another person, in such a way that it is not possible to distinguish them, and two of the coins perish, the remaining becomes the joint property of the two people, in the proportion of one-third and two-thirds, the two- Joint ownership by mixing.



thirds belong to the owner of the two-gold coins, and the one-third to the owner of the one gold coin.

Voluntary  
and compulsory.

1062. Shirket-i-mulk is divided into voluntary and compulsory.

Voluntary.

1063. Voluntary Shirket is a possessing in common, which arises from the acts of those who possess in common.

Like a possessing in common, which arises in the case of property being mixed, or by purchase, or acceptance of a gift or bequest.

Compulsory.

1064. Compulsory Shirket is a possessing in common, which arises from any cause not being by the acts of the possessors in common.

Like a possessing in common, which arises in the cases of inheritance, and of two properties getting mixed.

Bailees'.  
Joint ownership of.

1065. The joint possession of numerous people, who undertake to keep property, as regards the keeping of the property entrusted to them, is of the kind "Voluntary Shirket."

But when the wind blows and carries someone's clothes into a house held in common, the joint possession of the owners of the house, for the keeping of those clothes is of the kind "Compulsory Shirket."

Of choses,  
and choses  
in action.

1066. Shirket-i-mulk (Art. 1060) is divided into joint possession (Shirket) of corporeal property ('Ayn 159) and the joint possession of debts.

Joint possession of  
choses.

1067. The joint possessors of corporeal property (Shirket-i-ayn) is possession in common in respect of property which is fixed and existing.

Like the common ownership of two persons in a sheep, or undivided over a flock of sheep.

Joint possession of  
choses in  
action.

1068. The joint possession of a debt (Shirket-i-deyn) is a possessing in common in respect of a sum to be received.

Like the possession in Common of two persons in respect of so many piastres, which they have to receive as owing to them by someone.

## SECTION II.

*Is about the manner of disposition of known existing things ('Ayn, Art. 159) which are held in common.*

Joint owners  
same power  
as single  
owner.

1069. If a person who is owner absolutely of mulk property disposes of it in what way he wishes, the owners also of mulk property held in common, if they agree, dispose of it in that way.



1070. The owners of a house held in common can dwell in it together. But if one of them wish to introduce a stranger into that house, the other can prevent him.

Occupation of house.

1071. One of the shareholders of a mulk property held in common, can, with the leave of the other, make an absolute disposition of it. But it is not permitted to make a disposition in a way which will damage that shareholder.

Disposition by one owner with leave of other.

1072. If one of the shareholders say to the other "Sell me the share which you have" or "Buy my share," the demand cannot be enforced. But, if the mulk property held jointly between them is capable of division, and no shareholder is absent, he can cause division to be made. And if it is not capable of division he causes a division of the benefit to be made. The details of this will follow in Chapter II. See Art. 1083.

Right to partition.

1073. The produce of property held jointly by Shirket-i-mulk (Arts. 1045, 1060), is divided between the owners according to their shares.

Division of profit from joint property.

Therefore, if it is made a condition that something, in excess of his share, should belong to one of the shareholders, out of the milk or young of cattle held in common, the condition is not good. Comp. Art. 1187.

1074. As to ownership, the young follows the mother.

Young follows the mother.

Therefore, if the horse of one man covers the mare of another, the young which is the result belongs to the owner of the mare.

Likewise, if there be pigeons, a male belonging to one person and a female belonging to another person, the young, which is produced by these, belongs to the owner of the female pigeon.

1075. In Shirket-i-mulk (Arts. 1045, 1060), each of the joint owners is a stranger to the share of any other. One of them is not agent for the other.

Right of one joint owner.

Therefore, one cannot make any disposition, in respect of the share of another, until his permission is given.

But as regards the things, on which habitation depends, like the entrance and exit with respect to a house held in common, they are considered to be, in their entirety, the special property of every one of the owners.

*For example.*—When one of the owners of a horse, held, in common, has lent it or let it, without the leave of the other, if the horse is destroyed in the hands of the person who has



borrowed it, or the person who has hired it, the other owner can make him give compensation for his share.

Likewise, if one of the co-owners, without leave, ride or load a horse, held in common, and the horse is destroyed while going, he is responsible for the share of the other.

And likewise, if the value of a horse is diminished, by his growing weak from use for a time, he is responsible for the share of the other in the diminution of the value.

But if one of the co-owners of a house held in common, live in it for a time, without the leave of the other, he is looked upon as having lived in his own mulk property.

For this reason, he is not compelled to pay rent for the share of his co-owner. And if, by accident, the house is burnt, compensation cannot be enforced.

Cultivation  
of land by  
one joint  
owner.

1076. By one of the owners of land having cultivated it, the other does not have a right to take his share of the produce, like a third, or fourth share, according to the custom of the town.

But if there is diminution in the value of the plot of land by cultivation, he can make the co-owner, who cultivates, compensate him for his share in the loss value.

Letting of  
property by  
one joint  
owner.

1077. When one of the owners of property, held in common, has received rent by letting the property to another, he must pay the share of the other owner to him.

Absence of  
one joint  
owner.

1078. In case one of the shareholders is absent, the one present can take benefit from the mulk property held in common, up to his own share, if there is consent, by inference, in the manner explained in the articles hereafter.

When absent  
owner's  
assent  
inferred.

1079. There is considered to be the consent of the absent owner to the use by the owner, who is present, of the mulk property held in common, if no damage will be caused to the absent owner.

Not when  
use differs  
with person  
using.

1080. There cannot be an assent, by inference, on the part of the absent owner to a use of the mulk property held in common, which is different with the use of the person using it.

Therefore, one of the owners of clothes, held in common, cannot wear them in the absence of the other.

And again, one, in the absence of the other, cannot ride a horse, which is held jointly between them.

But in works which do not change by the change of the person



using the thing, like carrying a load, or driving oxen in a plough, he can use it up to his share.

In the same way, as when one of two persons jointly interested is absent, the other can employ every other day a servant who is hired in common or between them.

1081. The living in a house is not changed by the change of the person using it.

Living in a house.

Therefore, when one of the two owners of a house, held in common in equal shares, is absent, the other can use it in such a way as by living in it for six months and leaving it for six months.

But if his household circle is numerous, the occupation becomes of the class which changes by the use of the person using it, and for this there cannot be assent, by inference, on the part of the absent owner.

1082. If the shares, in a house held in common, which belong to the owner who is present and the owner who is absent, are separated the one from the other, he who is present cannot occupy the share of the absent one.

When shares of a house are separated.

But if there is fear of its being destroyed by remaining empty, the judge lets that separated share, and keeps its rent for the absent person.

1083. Division of the benefit (Muhayeh, Arts. 419, 1174), is held good only after litigation.

Right of co-owner when one occupies a house.

Therefore, when one of the owners of a house, held in common, occupies it absolutely for a time without paying rent for the share of the other, the other cannot say "Pay me rent for my share for that time" or "I will inhabit it for that time". But, if he wishes, and the house is capable of division, he causes it to be divided, and, if he wishes, he causes a division of the benefit to be made (Muhayeh, Art. 419), in order that it may be held good after that.

But when one of the owners of a house held in common is absent, if the other lives in it for a time as has been explained in the preceding article, when the absent owner returns, he can live in it for that time.

1084. If a person who is present, being one of the owners of a house held in common, lets it and takes his own share from the rent and preserves the share of the absent owner, it is lawful. When the absent owner has come, he takes his share from him.

Letting house in the absence of one co-owner.



Cultivation  
of land in  
absence  
of one co-  
owner.

1085. When one of the owners of land held in common is absent and, if it is known that cultivation will be beneficial to the land, and will not cause diminution in the value of the land, the co-owner who is present can cultivate the whole of that land.

And for whatever time he cultivates it, the absent owner, when he has come, cultivates that land for that time.

And if it is known that cultivation will cause loss of value to the land and that leaving it will be beneficial and cause the strengthening of the land, there can be no assent of the absent owner, by inference, to the cultivation of that land.

Therefore, the co-owner who is present can cultivate the amount of land, which is his share, only. For example, if he owns in equal shares, a half, and if he repeats his cultivation in a future year, again he cultivates that half. On the other hand, he cannot cultivate one year one side and another year, another side, and if he cultivates the whole of that field, the absent owner, when he has come, can make him responsible for his share of the loss of value of the field.

The above particulars are in case the owner who is present makes no application to the judge.

But in every case in which he applies to the judge, the judge gives him permission to cultivate the whole of that land in order that the tithe and tax may not be lost. And in this case, when the absent owner returns, he cannot claim the loss of value of the land.

Absence of  
co-owner  
of a vine-  
yard.

1086. When one of the owners of a vineyard, held in common, is absent, the other remaining on the vineyard take and consumes his own share, when the fruit is produced.

He can also sell the share of the absent owner and keeps the price of it.

But when the absent owner returns he has an option. If he wishes, he allows that sale, and he takes the price which has been kept. And if he wishes, he disallows the sale, and causes compensation to be made to him for his share.

Share of one  
co-owner in  
the hands of  
another is an  
amanet.

1087. The share of an owner in common when in the hands of another is like a thing deposited for safe keeping (Vedi'a Art. 763).

Therefore, if one of the co-owners of his own accord, give property, held in common, to another person, to keep, and the



property is lost, he is responsible for the share of his co-owner.  
See Art. 790.

1088. One of the co-owners sells his share, if he wishes, to his co-owner, and if he wishes, without the leave of his co-owner he can sell it to someone else. (Art. 215). Sale by part-owner.

But in the cases of mixing of property, as explained in Chapter I, one cannot sell to a third person his share in the partnership property mixed, until he has the leave of his co-owner.

1089. In the case of land which is inherited, if some of the heirs, with the leave of the others, or if there are infants, with the leave of their guardians, sow seed, which is their common property, the produce is owned in common between them all. Heirs, rights of as to cultivation.

But if one, from among them, sows his own seed, the crop is his, but he is responsible for the share of the other heirs in the loss of value of the land arising from the cultivation. See Art. 907.

1090. If one of the heirs, without the leave of the others, before the division, take a sum of money from the estate (tereke) and trade, the loss is considered to be on his own account. And in case he makes a profit the heirs cannot take a share of it. Responsibility of heir trading with the estate.

### CHAPTER III.

#### *Is about debts owned in common.*

1091. If the amounts due to two or more persons, which are owing to them by a third person, arise from one cause, it is a debt owned in common by Shirket-i-mulk (Arts. 1045, 1060), between the two. And if the cause be not united, the debt also is not owned in common. Debt owned in common, what is.

It is made clear in the articles hereafter.

1092. In the same way as the corporeal property, left by a deceased person, is owned in common between the heirs, according to their shares, so also debts which he has to receive from another, are the common property of the heirs, according to their shares. Heirs.

1093. A sum of money, which is owed as compensation by someone, who has destroyed common property, is the common property of the owners of that property. Damages to joint property.

1094. If two persons lend someone so much money, which is owned in common between them, that debt of the person, to Loan of joint money.



whom it is lent, is owned in common between those two persons.

But if two persons lend money separately to another, each of them becomes a separate creditor, they do not own jointly between them those debts of the borrower.

When price of joint property is a debt owned in common.

1095. When a property held in common is sold by one bargain, and, at the time of the sale, the share of none of the owners is fixed and declared, the debt which they have to receive from the buyer on account of this, is a joint debt.

But if, at the time of the sale, the amount, or kind of the share, in the price of the thing sold, of each one is named and fixed, *e.g.*, by saying the share of the one is so many and the share of another so many piastres, or, the share of one is pure money and the share of the other alloyed money, if the shares be separated and distinguished, the sellers are not owners in common of the price of the thing sold, each one becomes a separate creditor.

Likewise also, if after one has sold his undivided share to someone, the other also sell his undivided share, separately to that person, they do not become joint owners of the price of the thing sold. Each one becomes a separate creditor.

Sale by two persons of property of each.

1096. If two persons sell property belonging to each of them in one bargain to someone, for example when one has a horse and the other a mare, if they sell the two of them together for so many piastres, the sum, above mentioned, is one claim jointly owned between them.

And, if each of them has named a price, saying, so many piastres for his own animal, each one becomes a separate creditor, they are not joint owners in the debt which is the joint price of the animals.

Likewise, if two persons sell to another, each selling him a property separately, the prices of the property are not a joint debt, each one becomes a separate creditor.

Sureties.

1097. If two persons, by reason of their having entered into a contract of suretyship, have paid someone's debt, if they have paid from property which is owned in common between them, the debt which they have to recover from the principal debtor is a debt owned in common.

Two persons paying debt of third person by his order.

1098. If someone has given an order to two persons to pay his debt of so many piastres, and they have paid it, if they have paid from property which was owned in common between them,



what they have to receive from that person, is a debt owned in common.

And if the money paid is not owned in common between them, if the share of each is in fact separate, the debt which they have to receive from that person is not a debt owned in common merely by their having made payment at one time.

1099. If a debt is not owned in common, each of the creditors demands separately from the debtor what he has to receive. And each one counts whatever he receives to his own claim. Another creditor cannot demand a share from him.

1100. If the debt is joint, one of the creditors can demand from the debtor his own share.

And if one creditor, in the absence of another, by application to the judge demands from the debtor his own share, an order is made by the judge for its payment.

1101. If one of the creditors receives anything of the joint debt, it becomes owned in common between himself and the other. And his co-owner takes his share of it.

The receiver cannot appropriate it to his own share alone.

1102. If one of the creditors takes his share of a joint debt, and spends and consumes it, his co-owner can make him compensate him for his share.

*For example.*—If, of a 1,000 piastres being jointly owned in equal shares by two persons, one of those persons receives from the debtor 500 piastres, being his share, and spends and consumes it, the other creditor, who is his co-owner can make him make good to him 250 piastres; and thus the 500 piastres which is owing by the debtor is still the joint property of the two of them.

1103. If one of the joint creditors do not receive a thing which is part of the joint debt, but purchase merchandise from the debtor to be taken against his share in the debt, the other creditor is not part-owner of that merchandise, but from the price of the merchandise he can make him compensate his share. And if they agree on its being jointly owned, it becomes jointly owned between them.

1104. If one of the joint creditors makes an agreement for the right which he has in a joint debt, for example, if he makes a compromise with the debtor for such a quantity of cloth, and receives that quantity of cloth, there is an option. If he likes, he delivers to the co-owner a quantity of the cloth taken, equivalent to the share of the co-owner. If he likes he pays the

When debt not owned in common, each creditor claims separately.

Separate claim by joint creditor.

Payment to one joint creditor, appropriated to all.

Rights between co-creditors.

Where one joint creditor takes merchandise in payment.

Option of one joint creditor who has compromised.



co-owner a sum of money to make good his share of the right, which has been relinquished.

Right of joint creditor when the other has settled with the debtor.

1105. If one of the creditors, in the above mentioned way, receives a part, or, the whole of the common debt; or buys a thing as the price for his share; or makes a compromise with the debtor for a thing, as the equivalent of what he has to receive, the other creditor, in every case, has an option. If he wishes, he sanctions the transaction of his co-owner, and he takes his share from it in the way explained in the preceding articles. And if he wishes, he does not sanction the transaction, and demands his share from the debtor. And if, as regards the debtor, what he has to receive is lost, he has recourse to the creditor who has received. His not having sanctioned it before is not an impediment to his having recourse to him.

When one joint creditor has received his share and it is destroyed.

1106. If one joint creditor has received from the debtor his share of the debt owned in common, and it is destroyed accidentally in his possession, he is not responsible for the share of his joint owner in what he received.

But his own share is completely paid, and what remains to be received from the debtor is accounted the property of his co-owner.

One creditor employing debtor as servant for the debt.

1107. If one of the creditors employs the debtor as his servant at a wage, which is the price of his share in a debt owned in common, the other creditor can make him pay him, an amount which is equal to his own share of the wage.

One creditor taking a pledge which is destroyed.

1108. If one of two joint creditors take a pledge from the debtor for his own share, and the thing pledged is lost in his hands, the co-owner can make him compensate him the amount, which falls to his share of it.

*For example.*—When the amount of a debt owned in common in equal shares is 1,000 piastres, and one of the creditors takes a pledge, worth 500 piastres for his own share, and this pledge is destroyed in his hands, by reason of half of the common debt being lost, the other creditor can make him compensate him the 250 piastres which fall to his share.

One creditor taking a surety or making a hawale.

1109. If one of the creditors has taken a surety from the debtor for his share of the joint debt, or if he has caused a hawale to be made of his share to another person, the other creditor is joint owner with him in any sum, which he has received from the surety, or the person who accepted the hawale.



1110. If one of the creditors has made a present to the debtor of his share in the debt owned in common, or has declared the debtor's account free from it, his gift or release is good. He is not responsible for the share of his co-owner on account of this.

One joint creditor can release his share.

1111. If one of the creditors who are joint owners of a debt owned by them in common destroys property of the debtor, and by way of compensation there is a mutual setting off against what he has to receive, his co-owner can take his share from him.

Set off by joint creditor.

But if there is a debt due to the debtor from one of the creditors, for a cause which existed before the existence of the joint debt, and there is a mutual setting off against his share of the joint debt, his co-owner cannot make him responsible for his share.

1112. One of the creditors cannot give a delay for the payment of a debt owned in common without the consent of the other.

One joint creditor cannot give a delay.

#### APPENDIX.

1113. If someone sell a property to two persons, he claims his share separately from each of them, so far as the buyers are not sureties the one for the other, he cannot claim the debt of the one from the other.

Joint debtors liability of.

#### CHAPTER II.

*Is about partition (Qismet) and contains nine sections.*

3. Destour, 66.

#### SECTION I.

*Is about the description and classes of partition.*

1114. Partition (Qismet) is to make known an undivided share.

Partition, what it is.

That is to say, to distinguish and separate shares from one another with a measure like a keyl, or vezn or zira'. See 1, C.L.R., 91.

1115. Partition is made in two ways.

Partition of many things.

Thus either corporeal property held in common, i.e., things which are many and jointly owned, being divided into shares, the shares being undivided in every part, are collected together into one share for each. Like dividing thirty sheep owned in common by three persons into ten a piece for the three.

This is called partition by collecting together (qismet jem').

Or one corporeal thing ('Ayn) held in common is divided, and the shares, which are undivided over every part of the thing, come into separate existence as one share a piece. Like the

Partition of one thing.



division of a building site into two. This is called "partition by separation" (qismet tefriq) or partition of a single thing (qismet-i-ferd). See 1, C.L.R., 91.

Partition is a division and exchange.

1116. Partition from one point of view is a dividing and from another it is an exchange.

*For example.*—In the case where two persons have each a half share in every grain of a keyl of wheat, which is jointly owned in equal shares between them, and the whole has been divided into two parts, being a partition of the class "Qismet jem" and one part has been given to one and the other part to the other, each one is considered to have divided his own half share, and to have exchanged his other half for the half share of the other person.

Likewise, in the case where every one has a half share in every particular of a building site, which is held jointly in equal shares between two people, it is divided into two by partition by separation (qismet tefriq), and when a part has been given to each of them, each of them is considered to have separated his own half share and to have exchanged his other half share for the half share of the other person.

Partition of misly.

1117. In things which can be matched (Misly, Art. 145), the procedure by separation is preferred.

Therefore, as regards things which can be matched, which are held in common, each of the shareholders can take his own share, in the absence of the other and without his leave.

But until the share of the absent one is delivered to him, the partition is not complete. And if the share of the absent one is destroyed before delivery, the share which his co-owner has received, becomes joint property between them.

Partition of qiyemi.

1118. In things which cannot be procured in the bazaar (qiyemi, Art. 146), the process of exchange is preferred.

The exchange can be by mutual agreement, or by order of the judge.

Therefore, in respect of joint property, which is not of the sort that can be matched, one of the joint owners cannot take his own share, in the absence of the other and without his leave.

Mekilat, mevzunat, adediat.

1119. Things measured by the keyl (Art. 133), things which are weighed (Art. 134), and things which are counted (Art. 147), like walnuts and eggs, are all of the sort, which can be matched (Art. 145).

But things which are weighed (Art. 134), which are different and of different quality by reason of difference of skill in work,



like vases which are hand made, are of the sort which cannot be procured in the bazaar (Art. 146).

And moreover a thing that can be matched, which is mixed with something of another sort like wheat mixed with barley, is, if they cannot be divided the one from the other, one of those which cannot be procured in the bazaar (Art. 146).

Things which are measured by the arshun (Art. 136) are also things which cannot be matched in the bazaar (Art. 146). But when things measured by the arshun, are sold for so many piastres the arshun, and there is not a difference between the individual things, like cloth manufactured at a factory and one kind of cloth, they are of the sort which can be matched (Art. 145).

Mezru'at.

Things counted but different in price (Art. 148), there being a difference between the individual things as regards the price, like animals, musk-melons and water-melons, are of those which cannot be procured in the bazaar (Art. 146).

Adediat mutefavite.

Handwritten books are of the sort which cannot be procured in the bazaar (Art. 146), printed books are of the sort which can be matched (Art. 145).

1120. Of both partition by collection and partition by separation (Art. 1115), there are two sorts.

Partition by consent or by Judge.

The first sort is partition by consent, the second sort is partition by the judge.

1121. Partition by consent is partition made with the consent of the owners of the common mulk property divided, that is, of the people who make the division. And they make the division between them by mutual agreement, or the judge makes the division with the consent of all. See 1, C. L. R., 91.

Partition by consent.

1122. Partition by the judge is a partition by a judge in a compulsory manner and by judgment, on the demand of some of the owners of the mulk owned in common, that is to say, of those between whom the division is made. See 1, C. L. R., 91. See Arts. 1129, 1130, 1182, 1183.

Partition by Judge.

## SECTION II.

*Is about the conditions of partition.*

1123. It is a condition that the thing divided be corporeal property ('Ayn, Art. 159).

Must be of existing property.

Therefore, the partition of a debt held jointly before its receipt, is not good,



*For example.*—If a deceased person has to receive money from numerous persons, and a division is made, giving that which he has to receive from such a one to such heirs, and what he has to receive from such a one to such heirs, it is not good. And in this case, if one of the heirs has collected anything, the other heir is joint owner with him. See Chap. I, s. 3.

Shares must  
be separated.

1124. Partition is not good until the shares have been distinguished and separated.

*For example.*—If one of the owners of a heap of corn, owned in common, say to the other, "Take this side of the heap and let the other side be mine," it is not considered that partition has been made.

Must be the  
mulk pro-  
perty of  
persons  
partitioning.

1125. It is a condition that the thing divided be the mulk property of the joint owners at the time of division.

Therefore, if, after the partition, a person turns up having a right to the whole of the thing divided, the partition becomes void. And again, if a person turns up, who has a right to an undivided part, like a half or a third, of the thing divided, the partition becomes void, and the division anew of the thing divided is necessary.

Likewise, if a person turns up having a right to the whole of one of the shares, the partition is void, the remaining share becomes joint property between the shareholders. And if a person turns up having a right to a fixed quantity of one share only, or, an undivided part, the owner of that share has an option, if he wishes, he sets aside the partition, and, if he wishes, he does not annul the partition, and demands from the other shareholders the deficiency.

*For example.*—After a plot of land of 160 arshuns has been divided equally between two people, if someone turns up having a right to half of one share, the owner of that share, if he wishes, annuls the partition, and, if he wishes, he demands from his co-owner a quarter of the co-owner's share, that is to say, from his share he takes a plot of twenty arshuns. And in case there has turned up a person having a right to a fixed quantity of each one of all the shares, if it is for an equal amount from each, the partition cannot be set aside. And if that, to which that person has a right, is little from one and much from another, only the excess is taken into consideration, and it is as if someone had turned up, who has a right to a fixed quantity of the share of the one only, and the person whose share the excess falls upon has an



option, and if he wishes, he annuls the partition, and if he wishes, he has recourse to his co-owner for the amount of his deficiency.

1126. A partition made without authority, (Fuzuli, Art. 112), is dependent on consent, by word or by act.

*For example.*—If one, of his own accord, make a partition of property owned in common, it is not lawful nor effectual (Nafiz, Art. 113), without confirmation.

But, if the owners of the property consent by word, saying, "all right," or if they make a disposition in respect of the divided share, by disposing of it as mulk, that is to say, in a way which is one of the attributes of ownership, like selling or letting it, the partition is good and effective (Nafiz, Art. 113).

1127. It is necessary that the partition be just, that is to say, that it be made just as regards the rights of the share, and that there be no excessive (Fahish, Art. 165), deficiency for one of them. Therefore, in partition an action for excessive loss can be heard. But after those for whom the partition has been made have admitted that right has been done in carrying out the partition, if they bring an action for excessive damage, it cannot be heard. See Note to Art. 16 and Art. 1160.

1128. In partition by consent, it is a condition, that there should be the assent of every one of those, who are making the division. Therefore when, one of them is absent, partition by consent is not good, and if there be a minor among them, his natural or appointed guardian stands in his place. And if there be no natural or appointed guardian, it is dependent on the order of the judge. And a guardian is appointed by the judge and partition is made by his intervention.

1129. In partition by a judge, it is a condition that there should be an application. A compulsory partition by the judge is not good, unless there have been made an application by one of the share-holders.

1130. In case some of the share-holders ask for partition, and others object to it, if the property is capable of partition, the judge makes the compulsory partition in the way which will be explained in sections 3 and 4. If it is not capable of partition, he does not make a partition. (See Arts. 1182, 1183).

1131. Capable of partition (qabil qismet) is jointly owned property which can be partitioned so that the use expected from that property is not destroyed by partition.

Partition  
without  
authority.

Partition  
must be just.

Partition by  
consent  
absentees  
and minors.

Partition by  
Judge must  
be on appli-  
cation.

When  
application  
is opposed.

What is  
capable  
of partition.



## SECTION III.

*Is about partition by collection (Art. 1115).*

Partition by  
collection.  
Things of  
one sort.

1132. In regard to corporeal things owned in common, which are of one sort, partition by the judge is permitted, that is to say, the judge can decree a partition of them upon the application of some only of the part owners, whether they be of the sort which can be matched (Art. 145), or of the sort which are not found in the bazaars. (Art. 146).

Things of  
one sort  
which can be  
matched.

1133. By reason of their being no difference between individual things of those which can be matched (Art. 145), and are of one sort, in addition to the partition not being injurious to anyone of the joint owners, and every one is considered to have taken his own right, and a completeness of property in every one is considered to come into existence.

So when a partition has been made, according to their shares, of a quantity of wheat owned between two persons, every one is given in full his own right, and becomes absolutely owner of the wheat which falls to his share.

So many drachms of gold bars, and so many oke of silver, or copper or iron bars, and so many pieces of woollen cloth being of one sort, and so many pieces of linen, and such a number of eggs are of this sort.

Things of  
one sort  
which  
cannot be  
matched.

1134. When there is a difference between the individual things of the sort which are not found in the bazaar (Art. 146), and they are of one sort, if they are unlike by a very small difference, these also are considered capable of division in the way above mentioned. For example, when 500 sheep are owned in common between two persons, and partition is made between the two according to their shares, it is as if each one had taken his own right as it existed.

So many hundred camels, and so many hundred cows are also of this sort.

Things of  
different  
sorts.

1135. As regards different kinds, that is to say, jointly owned corporeal property of different kinds, partition by the judge is not allowed, whether it be of the sort which can be matched (Art. 145), or of the sort which is not found in the bazaar (Art. 146), that is to say, the judge cannot make a compulsory division of them by collection (Art. 1115), upon the request of one only of the joint owners.

*For example.*—A judicial partition, by giving one of the joint owners so many keils of wheat and to the other, as



equivalent to it, so many keys of barley, or to the one so many sheep and to the other, as equivalent to it, so many camels or cows, or to one a sword and to the other saddle implements, or to the one a house, and to the other a shop or chiftlik, is not permitted.

But if they have consented, a partition by consent, in the above mentioned way, is valid.

1136. Vessels which are different by reason of different workmanship, even if they are made of metal of one sort, are also considered to be different in kind.

1137. Ornaments and big pearls and precious stones are things different in kind.

But small jewels not different in value as between the individual stones, like small pearls and the small diamonds called "Sayi tashi" are considered to be things of the same kind.

1138. Numerous houses and shops and chiftliks are also things differing in kind, a partition by collection (Art. 1115) cannot be made.

*For example.*—A judicial partition by giving one of many houses to one part-owner, and another to another, is not allowed, but each of them can be partitioned by separation (Art. 1115), as stated below.

#### SECTION IV.

*Is about partition by separation (Art. 1115).*

1139. If the division of corporeal property owned in common is not injurious to any of the owners, it is capable of division (qabil qismet, Art. 1131).

*For example.*—When partition is made of a plot of land, on each part a building is made, and a tree is planted, and a well is sunk. In this way the use, expected from the land, remains.

Likewise, when in a large house (qonaq) the men's and women's apartments are divided to make each a separate place, the benefit of residence which is expected from the house is not destroyed, and each of the part-owners becomes absolute owner of his own place.

Therefore, a judicial partition is permitted, whether in respect of the land, or in respect of the house. That is to say, if one of the owners applies for partition, and the other opposes it, the judge makes partition compulsorily.

What is  
difference  
in kind.  
Workman-  
ship.

Precious  
stones.

Buildings.

Partition  
by separa-  
tion.



(N. B. Partition is made although one co-owner has built. See Art. 1173).

Partition  
beneficial to  
one and  
injurious  
to the other

1140. When the division of corporeal property, held in common, is beneficial to one of the owners, and injurious to the other, that is to say, when the benefit expected from it is destroyed for him, if the person who is benefited applies for a partition, in this case also the judge decrees partition of it.

*For example.*—When a house is held in common, and the share of one of the shareholders is a small one, so that he will not be able to derive benefit by living in it after the division, if the person who has a large share desires partition, the judge makes a judicial partition of it.

Partition  
injurious  
to all.

1141. In the case of corporeal property owned in common, the division of which is injurious to all the owners, partition by the judge is not allowed.

*For example.*—If a mill be divided it can no longer be used as a mill again. In this way the use expected from it, is destroyed. Therefore, the judge cannot divide it at the request of one only of the joint owners. But by mutual consent it is divided.

A bath, and a well, and an underground water pipe (Art. 1049), and a small room, and a wall between two houses are similar to this.

Things like an animal with a carriage and a saddle and arms and the stone of a finger ring, which it is necessary to split and break are also of this sort. For none of them is partition by the judge allowed.

Books

1142. The division of the leaves of a book held in common is not allowed, nor is the division by volume of a book which is divided into volumes.

Roads.

1143. When one part-owner demands the partition of a road, which is jointly owned by two or more persons, and, on which no one else has the right to enter, if another part-owner opposes it, the matter is considered. If after the division there will remain a way a piece for each one, partition is made. Otherwise, partition cannot be made compulsorily. Unless each one has another road and passage, in which case partition is made.

Right of  
overflow.

1144. The way by which water runs away (Mesil, Art. 144), when owned in common is like a road owned in common.

In case one of the part-owners demands partition and another objects, if after the partition there remains sufficient room for



every one to let his water flow, or if there is another place for each which will take his overflow, partition is made. And otherwise it cannot be made.

1145. As a person is able to sell a road which is his mulk property, on the condition of keeping a right of passage over it, so on the partition of immovable property, owned jointly between two persons, a partition is lawful on the condition that the thing itself (raqabe), that is to say, the mulk ownership of the road held in common, remains the property of one, and that the other has only a right of way.

Reservation  
of right of  
way.

1146. In the partition of a house, it is lawful that the wall, between the two shares, be left as owned in common between the two shareholders. A partition also is lawful on the condition that it be the mulk property of one of them only.

Party wall  
on division  
of a house.

## SECTION V.

*Is about the manner of partition.*

1147. The property owned in common, if it is of the sort measured by the keyl, is partitioned by the keyl, if it is of the sort things which are weighed, it is partitioned by weight, if it is the sort of thing which is counted, it is partitioned by number, if it is the kind of thing which is measured by the arshun, it is partitioned by the arshun.

Mekilat,  
Mevzounat  
Adediat, and  
Mezru'at.

1148. Building plots and land by reason of their being of the kind mezru' (Art. 136), are partitioned by the zira. But the trees and buildings upon them are partitioned by estimation of their value.

Land,  
Buildings  
and trees.

1149. In the partition of a large house (qonaq), if the buildings of one share are more valuable as compared with the buildings of the other, if it is possible, from the building site there is given to the second share land up to the excess, which will make it equal as regards value, if it is not possible, money is added, equivalent to it.

Large  
houses:

1150. When the partition of a house, jointly owned between two people, is desired, so that there may be given to one the upper floor and to the other the lower floor, both the upper floor and the lower floor are valued, and the partition is made on a consideration of the value.

Partition of  
a house by  
storeys.

1151. When he is going to partition a house, the person who is making the partition must first make a plan of it on paper,

Procedure  
on partition  
of a house.



and measure the site by the zira, and value the buildings, and arrange and adjust them according to the shares of the owners, and, if it be possible, to separate each share with its right of way (haqq tarik) and right of getting water (Art. 143), and right of overflow (Art. 144), so that they may not remain dependent the one on the other; and he must name them "first", "second", "third" and afterwards he must draw lots. And "first" belongs to the person whose name comes out first and "second" to him whose name comes out second and "third" to him whose name comes out third. If there are more shares he proceeds also in this way.

Taxes,  
division of.

1152. State taxes, if they are for the protection of individuals, are divided according to the number of persons, and women and children must not be entered in the list for the distribution.

If they are for the protection of mulk property, they are divided according to the amount of the mulk.

Because as has been said in Art. 87, "the debt is according to the advantage realised".

## SECTION VI.

*Is about options.*

Options,  
sorts of.

1153. As in bey' (Art. 105), so also in the partition of different kinds, there is option by stipulation, and option on inspection, and option for defect.

*For example.*—When property, owned in common, is divided between the common owners by mutual consent, so that one takes so many keys of wheat and the other, as the equivalent to it, so many keys of barley, or the one so many sheep, and the other, as equivalent to them, so many cows, if one of them has made a condition that there should be an option for so many days, within that time, if he wishes, he accepts that partition and, if he wishes, he annuls it. And if one of them, at the time of the partition, has not seen the property divided, when he does see it, there is also an option.

And if the share of one of them prove defective, if he wishes, he accepts it, and, if he wishes, he returns it.

Qiyeme of  
one sort.

1154. On the partition of things not found in the bazaar (Art. 146), which are of one sort, there is an option by stipulation, on inspection and for defect.



*For example.*—When a division has been made according to their shares, between their owners of a hundred sheep owned in common, if one of them has made a stipulation that he is to have a right of option for so many days, within that time he has an option to accept or not to accept the partition.

And, if he has not seen the sheep at the time; when he sees them, likewise, he has an option. And if the sheep which compose his share have clearly an ancient defect, there is also an option, if he wishes, he accepts, and, if he wishes, he returns them.

1155. On a partition of things which can be matched (Art. 145), there is no option by stipulation or on inspection, but there is an option for defect. Misly.

*For example.*—When there has been a partition of a heap of wheat owned in common between two persons, a condition that there should be an option for so many days, is not enforced. And if one has not seen the wheat, when he sees it there is no option.

But if it has been given to the one from the upper part of the heap, and to the other from the lower part, and the lower part turns out to be rotten, the owner of it has an option. If he wishes, he accepts it, and, if he wishes, he returns it.

## SECTION VII.

*Is about the annulling and rescission of a partition.*

1156. When the lots are all drawn, the partition is complete. See Art. 1151.

Partition when complete.

1157. When the partition is complete, it can no longer be gone back from.

Complete partition binding.

1158. If, during the partition, for example, where many lots have been drawn and one only remains, one of the co-owners wishes to go back from the partition, examination is made. If it is a partition by consent, he can go back from it, if it is a partition by the judge, he cannot do so.

When one party can annul.

1159. After the partition, the co-owners can annul the partition by their own consent; and the things divided can be owned in common between them as before.

Setting aside by consent.

1160. If it is shewn that there is excessive damage in a partition, it is set aside, and a division is made again which is just. See Note to Art. 16, Art. 1127.

For excessive damage.



Where property of deceased divided before debts paid.

1161. If after the partition of the disposable estate of a deceased person, it appears that there is a debt owing by the deceased, the partition is set aside.

Unless the heirs pay the debt, or the creditors release them from it, or there is property of the deceased other than that which was divided and the debt is paid with it. In those cases the partition is not annulled.

## SECTION VIII.

### *The consequences of partition.*

Each becomes sole owner of his share.

1162. After the partition each of the co-owners becomes absolutely owner of his own share. As regards the share of one, another has no longer any connection.

And every one makes what disposition he likes in respect of his own share, as will be shewn in Chapter III.

So much so that, when partition has been made of a house jointly owned by two persons, in case there has been put to the share of the one a building, and to the share of the other an empty building site, the owner of that site upon that site may sink a well, can make an underground water channel, and may make a building and raise it as high as he likes. If he shuts off the air and sun of the owner of the house, he cannot prevent him.

What included in share—trees and buildings.

1163. In the partition of land, the trees, and, in the partition of a chiftlik, the trees and buildings, without being mentioned, are included.

That is to say, the trees and buildings belong to the person on whose share they are found.

There is no necessity for a statement at the time of the partition to include them by a general description, such as, saying, with all rights, or with all that goes with it.

On partition of land, crops not included.

1164. On the partition of land, or a chiftlik, cereal crops and fruits, so far as they are not mentioned, are not included. They remain common property as before. Whether or not there has at the time of the partition been a general description, such as, "with all its rights."

Rights of way and overflow are included.

1165. The right of way and of overflow (Art. 144), which the property divided has over neighbouring lands, is in every case included in the partition.



That is to say, it becomes one of the rights of the person, for whose share it exists, whether or not it be said, "with all rights."

1166. If at the time of the partition, a stipulation is made, giving the share of one a right of way, or, a right of overflow over the share of the other, that stipulation is held good.

Reservation of rights of way and overflow.

1167. When there is a road for one share over another share, and a stipulation is not made at the time of the partition, preserving it; in case a change of it to another direction is possible, a change is made, whether it has or has not been said at the time of the partition "with all its rights."

As to preservation of rights of way and overflow which exist.

But, if a change of the road to another direction is not possible, it will be considered.

If they have said at the time of the partition "with all its rights," the road is included in the partition, and remains as before.

And if they have not added a general declaration, like, "with all rights," the partition is set aside.

In this matter a right of overflow (Art. 144), is like a road.

1168. When there is a house owned in common between two persons, and another person has a road over it, if the owners of the house are going to partition that house, the owner of the road cannot prevent them. But they, when they have partitioned the house, leave the road as it was before.

Where a person other than the joint owners has a right of way or overflow.

And if, with the consent of the three, the road is sold together with the house: if the road is owned in common between the three, the price is divided between the three. And if the ownership of the road, subject to the right of passage, belongs to the owners of the house, if the other person only has a right of passing over it, every one takes that to which he has a right.

Thus the land with the right of way is valued first, and then it is valued without the right of way, and the excess, of the one over the other of the two, belongs to the man, who has the right of way, the remainder falls to the owner of the house.

A water channel also is like a road.

That is to say, in the case of a house owned in common, if another person has a right of overflow when the owners of the house make partition of that house, they must preserve the water channel as it was before.



Where a person other than the joint owners has a house in the courtyard.

1169. When, in the courtyard of a house there is a house belonging to some other person, and the owner of the latter house has a right of passage through that courtyard, when the owners of the first named house wish to make partition of that house, the owner of the other house cannot prevent them. But when they make partition of the house, they leave a road for him in accordance with the breadth of the door of his house.

Joists resting on wall between the divided parts.

1170. When there is a wall between the two parts of a house, which has been divided into two, and the ends of the joists, which are upon the other wall of one part, are found on that wall owned in common, if, at the time of a partition, a condition was made for the removal of those joists, they are removed, otherwise they are not.

When a division has been made on the condition, that the wall between the two parts should be the property of one of the co-owners, and the joists whose ends rest upon the wall the property of another, the decision is the same.

Overhanging trees.

1171. If the branches of the trees which are on one part hang down over the other, if, at the time of the partition a condition was not made for cutting them, those branches cannot be cut.

Where there is a right of way over a private road.

1172. When a house owned in common is divided, and there is a right of passage over a blind alley, every one of the part-owners can open a door and window on that road. The other owners of that road cannot prevent them.

Where one co-owner has built.

1173. After one co-owner of a mulk property, held in common and capable of division, has erected a building for himself, without the leave of the other co-owner, when the other co-owner asks for partition, partition is made.

If the building is placed in the share of the person who built it, then all is right. If it is placed in the share of the other co-owner, he can have it pulled down and removed.

## SECTION IX.

*Is about the partition of the benefit (Muhayeh).*

Definition.

1174. "Muhayeh" consists of a partition of the benefit.

When allowed.

1175. "Muhayeh" of things which can be matched (Art. 145), is not permitted. It is permitted for those things which are not found in the bazaar (Art. 146), from which it is



possible to derive benefit, while the things themselves are preserved. (As to when it can be enforced see Arts. 1181, 1182, 1183). See 1, C. L. R., 91.

1176. "Muhayeh" is of two sorts.

The first sort is partition of the benefit by time. Like a partition of a field owned in common between two persons, on the terms that one should cultivate one year, and another, another year.

And like a partition of the benefit on the terms that every one of the co-owners of a house held in common should remain in that house, in turn, for one year.

The second sort is a division of the profit by place.

Like a partition of benefit on the terms that one should cultivate one-half of a field held in common between two persons, and, the other, the other half. Or that one should live in one part of a house held in common, and, the other in the other part, or one in the upper storey and the other, in the lower storey, or that of two houses held in common, one should live in one, and the other in the other. As to trees see Art. 1187, see 1, C. L. R., 91.

1177. A partition of the benefit is lawful, which is on the terms, that the owners of an animal owned in common should use it in turn. And where there are two animals owned in common, a partition is lawful on the terms, that one should use one, and the other the other. See Art. 1187.

1178. Partition of use by time (Art. 1176), is a kind of exchange.

Thus one of the co-owners exchanges his own share of the benefit, which he has in his turn, for a share of the benefit, which the other co-owner has in his turn. In this a partition of the benefit is like a letting.

Therefore, it is necessary to make a partition of the benefit for a time fixed, like so many days, or, so many months.

1179. Partition of benefit by place (Art. 1176), is a sort of separation.

Thus, while the undivided benefit of two co-owners, for example, in a house held in common, extent to every part of that house, by the partition of the benefit, the benefit of the one is collected into one part of that house, and the benefit of the other into the other part of that house.

Therefore in division of benefit by place, it is not necessary to fix the time.

Two sorts.  
By time.

By place.

Animals.

Partition by  
time like a  
letting.

Partition  
by place  
not ne-  
cessary to  
fix time.



Division to  
be by lots

1180. In division by time (Art. 1176), for the beginning, that is to say, for who is to make the first use, lots must be drawn. And in division by place (Art. 1176), the place must be fixed by lot.

When  
enforced.

1181. If one of the owners of numerous things held in common demands partition of the benefit, and the other objects, if the things held in common give similar benefit, a partition of the benefit is enforced.

And, if they are different in their benefit, the division of the benefit is not enforced.

*For example.*—If one seeks a division of the benefit, on the terms that one should live in one of two jointly owned houses, and the other in the other, or that one should use one of two jointly owned animals and the other, the other, the division of the benefit is enforced.

But a partition on the terms that one lives in a house, and the other lets out for hire a bath, or, that one lives in a house, and the other cultivates a field, while it is lawful with consent, if one opposes, it is not enforced.

When the  
property is  
capable of  
partition.

1182. When one of the owners of property held in common, which is capable of partition (Art. 1131), asks for partition of the property, and the other asks for partition of the benefit, the claim for partition of the property is accepted. And in case none of them demand partition of the property, and one demands partition of the benefit, and the other objects, partition of the benefit is enforced.

When pro-  
perty is not  
capable of  
partition.

1183. If one of the owners of corporeal property held in common and not capable of partition (Art. 1131), demands partition of the benefit, and the other objects, the partition of the benefit is enforced.

Partition of  
rent of  
things  
let to the  
public.

1184. The rent made, by leasing to proper persons immovable property, which is jointly owned, and from which benefit is made from the hire paid by the public, like, a shop, a mill, a coffee shop, an inn, and a bath, is divided, according to their share, between the co-owners.

And if one of the co-owners refuses to let his share, partition of the benefit (Art. 1176), is enforced.

But if the income of one in his turn, that is to say, the rent paid to him, is in excess, that excess is divided between the co-owners.



1185. As every one of the co-owners, after partition of the benefit by time (Art. 1176), can personally make use of the immovable property held in common, in his own turn, and after partition of the benefit by place (Art. 1176), can personally use the part placed to his own share. So also he can take rent for it by letting it to another.

Co-owner can let his share of the benefit.

1186. After a partition of the benefit has been made in the first instance upon the terms of taking the benefit, and the share-owners let their own turns, if the profit for the turn of one is in excess, the other shareowner does not have a joint interest in that excess.

As to excess of benefit by letting.

But if at first they make a partition of the profit on the terms that they take the rent, for example, that one of them should take the rent of a house owned in common for one month and the other for one month, the excess of rent is owned in common.

But when they have made partition of the benefit upon the terms that one should take the rent of one of two houses, and another the rent of the other, if the rent of one house is in excess, the other shareholder does not become part-owner of it.

1187. A division of the benefit by which the parties take corporeal property, is not permitted.

Trees, animals etc.

*For example.*—By reason of the fruit of trees and the milk and wool of animals, being corporeal property, a division of the benefit on the terms that one co-owner should gather the fruit of one quantity of trees owned in common, and another the fruit of another number of trees, or that one should take the milk and wool of one flock of sheep, and the other the milk and wool of another flock, is not lawful. Comp. Art. 1073.

1188. When the co-owners have made a partition of the benefit between them by agreement, afterwards one of them can annul it alone. But if one has let his turn for rent, until the expiration of the lease, the other cannot annul the partition of the benefit.

By agreement can be annulled.

1189. One only of the share-holders cannot annul the partition of the benefit made by decree of the judge. But all, by mutual agreement, can annul it.

By judge can be annulled by consent.

1190. When one of the co-owners wishes to sell or divide his share, he can annul the partition of the benefit. But if he seeks to annul the partition of the benefit, without cause, merely

Party can annul for cause.



to make the property return to its old state, the judge does not permit it.

Death does  
not annul.

1191. The partition of the benefit does not become void by the death of one or all of the co-owners.

### CHAPTER III.

*Sets out the precepts of the law relating to fences and neighbours, and contains four sections.*

#### SECTION I.

*Sets out some rules about the rights of mulk property.*

Right of  
disposition  
by owner.

1192. Every one makes such dispositions of his mulk property, as he wishes. But if the right of another is attached to it, it prevents the owner from making a disposition, as independent owner, in respect of his mulk. See Art. 1197.

*For example.*—In a building, in which the upper storey is the mulk property of one, and the lower storey the mulk property of the other, by reason of the owner of the upper storey having a right of support as regards the lower storey, and by reason of the owner of the lower storey having, as regards the upper storey a right to be roofed, that is to say, to be covered and protected from the sun and rain, one, unless he has leave from the other, cannot do anything, which will damage him, and he cannot pull down his own building.

Owners of  
flats, right  
to street  
door.

1193. When there is one street door for the lower and upper storey, the owners of the two storeys make use of that door as though it were owned in common. One cannot prevent the other from coming in and going out.

Rights  
above and  
below land.

1194. Whoever is mulk owner of a piece of land, is owner of what is above it and what is below it. That is to say, he is able to make what use of it he wishes; for instance, on a building site which is his mulk property, to make what building he likes, and, to raise it as high as he likes, and, by digging the ground, to make a cellar, and to sink a well as deep as he likes. Compare Art. 1197.

No right  
over next  
land.

1195. A person cannot extend, over his neighbour's house, the eaves of a room made new on his house. If he does the quantity above that house is cut off. See Art. 1224.

Trees  
affecting  
neighbour's  
land.

1196. If the branches of a tree in someone's garden have extended over the garden or house of his neighbour, the neighbour has a right to cause his own air to be freed, by cutting those branches, or drawing them back and tying them.



But the tree cannot be cut down, for the reason that its shade does injury to what is sown in the neighbour's garden.

1197. No one can be prevented for making such disposition as he likes in regard to his own mulk, unless there be excessive damage to another. In that case he can be prevented. As is set out in detail in Section 2.

User of land causing excessive damage forbidden.

## SECTION II.

*Is about the relations of neighbours to one another. See also Arts. 1195, 1196, 1197.*

1198. Every one can make an erection as high as he likes and can make what he likes on a wall which is his own mulk property, unless there has been excessive damage, his neighbour cannot prevent him.

Erection on land causing excessive damage not allowed.

1199. Things are excessive damage (Zarar fahish) which damage a building, that is to say, which weaken it and become the cause of its falling down, or, which interfere with the essential requirements, that is to say, the original benefit which is expected from the building, like dwelling in it. See Art. 1201.

Excessive damage, what is.

1200. Excessive damage in whatever way it may be caused is to be removed.

Excessive damage, removed.

*For example.*—When a forge or mill is made touching a house, and weakness is caused to the building of the house by the striking of the iron or the turning of the mill, or, when it is not possible for the owner to live in his house from the bad smell, made by a new linseed oil factory, or, the excessive smoke made by a new oven, because these damages are excessive damage, they can be put a stop to in any way which is possible.

Structural deterioration.

Smell.

Smoke.

Again, if someone, on a building site touching the house of another, makes a new water channel, and weakens the wall of the house by the taking of the water to his mill, or if someone makes a dust heap at the foot of his neighbour's wall, and, by throwing his sweepings there the wall is decayed, the owner of the wall can cause the damage to be removed.

Building, damage to.

Likewise, when the owner of a house is annoyed, by the dust coming from a threshing floor newly made by someone else near his house, to such an extent that he cannot live in that house, the damage from it is put an end to.

Dust.

So also, if someone cuts off the wind of the threshing floor of another, with a new high building near the place of the threshing floor, it can be put a stop to, by reason of its being excessive damage.

Threshing floor, injury to.



Goods,  
injury to.

Likewise, if someone makes a new cook shop in the market of the cloth merchants, and its smoke causes excessive damage by falling on the goods of his neighbours, it can be put a stop to.

Sewage.

And likewise, on the sewer which is in a person's house being broken, if there is excessive damage by the flowing into the house of his neighbour, on action brought by the neighbour, the repairing and improving of that sewer becomes necessary. See 2, C. L. R., 79.

Excessive  
damage,  
what is.

1201. To interfere with benefits which are not fundamental necessities, like interfering with the sun coming in or cutting off the view or air of a house, is not excessive damage (zarar fahish).

But to stop the light altogether is excessive damage.

Light.

Therefore, when someone, with a new building has blocked the window of a neighbour's room which has one window, if it is so dark that writing cannot be read, he can be made to remove it, by reason of there being excessive damage. It cannot be said "Let the light come through the door, because it is necessary to shut the door on account of the cold and for other causes."

But if the room has two windows, and one of them is blocked with a new building in the manner above mentioned it is not considered excessive damage.

Overlooking  
women's  
places.

1202. That the places which women frequent, like a kitchen, the head of a well and the courtyard of a house, should be seen, is considered excessive damage (zarar fahish).

From  
window.

Therefore, if from a window newly made in someone's house, or from the window of a house which has been newly built, the places which the women frequent of the adjoining neighbour, or of the person who is on the other side of the street, are seen, an order is made for the removal of this damage.

How  
remedied.

And that person is compelled to put a stop to that damage, by building a wall, or wooden partition in such a way that the women will not be able to be seen.

But in any case he is not compelled to block his window.

Through  
fence.  
How  
remedied.

Likewise if through the gaps of a fence made of wood, his neighbour's places which the women frequent are seen, the owner of the fence is ordered to stop those gaps, but he is not compelled to pull down the fence and make a wall. See Art. 22, see 1, C. L. R., 84, 2, C. L. R., 79.

Window  
higher than  
a man.

1203. When one's window as regards the ground is higher than the height of a man, his neighbour cannot block that window on the ground that there is a probability that by placing a ladder,



he looks into the neighbour's place which the women frequent.  
See Art. 74.

1204. A garden is not considered to be a place which women frequent.

Garden not a women's place.

Therefore, when from a person's house his neighbour's places which the women frequent are not seen, except by his garden being seen, his neighbour cannot say, "Shut off the view which there is into my garden," by reason of the women being seen at the time only when they come into the garden.

1205. If, when someone goes up into a fruit tree which is in his garden, his neighbour's place which the women frequent is seen, when that person goes up into that tree, he must give notice for the women to cover.

Overlooking by climbing fruit trees.

If he has not given notice, the judge prevents him from going up into that tree without notice.

1206. When two persons have divided a house which they held jointly between them, and from the place which is assigned to the share of one of them, the part of the other which the women frequent is seen, an order is made for them to make a screen jointly between them.

Overlooking after partition.

1207. If, while someone is using his mulk property in a lawful way, another person, with a new building near his, is himself injured, the necessity of removing his injury falls on himself.

New building, injury to.

Therefore, if from an ancient window of a house the place where women go in some new house is seen, the owner of the new house must put a stop to his own injury. He has no right to make a demand on the owner of the old house.

So, if someone make a new house in his building site which adjoins an iron foundry, he cannot cause the foundry to cease from work, saying "by the striking of the iron excessive damage to my house is being produced".

And also, when someone has made a new house in the vicinity of a place, which is an old threshing floor, he cannot say to the owner of the threshing floor "Do not thresh on the threshing floor there, because the dust of the threshing floor comes into my house." See 2, C. L. R., 79.

1208. When from the windows of an ancient, that is to say, old house, the empty building site of his neighbour is seen, and the house has been burnt down, and after the neighbour has first built a new house on that building site, the owner of the former

Where a house is rebuilt.



house erects a building on the old plan; if from the windows opened the part where women stay in the first mentioned new house is seen, the owner of the house must himself put an end to the injury, he cannot compel the owner of the other building to cut off the view.

Overlooking  
caused by  
pulling  
down.

1209. When by reason of there being a high room belonging to one neighbour between the women's places of that neighbour and some windows newly made in the house of another, the place where women stay is not seen from those windows; if the place where the women stay is seen from those windows by reason of the room being pulled down, the neighbour cannot say, by reason only of the windows being new, "cut off the view," or "block the window," he must put an end to the injury himself.

Rights over  
wall jointly  
owned.

1210. One of the owners of a wall held in common, so long as he has not the permission of the other, cannot raise it, and cannot make upon it an upper room or other thing. Whether it be a cause of damage to the other or not. But if one of them, for the purpose of building a room on his building site, shall place a joist, that is to say, shall make the end of a joist to rest on that wall, his co-owner cannot prevent him.

But whatever number of joists he shall place, since his co-owner also has the right to place that number of joists, he can only place half the number of joists, which the wall can bear being placed upon it, he must not exceed that number.

And if the joists of the two originally on that wall were equal, if one is going to add to his own joists, the other can prevent him.

Rights over  
wall jointly  
owned.

1211. One of the owners of a wall in common cannot change the places of the joists, which are upon that wall, to the right, or to the left, or from below to above. But, when the ends of the joists are in a high part, he can lower them and place them in a lower part of the wall.

Protection  
well from  
sewage.

1212. If near someone's water well his neighbour make a cesspit, or a sewer, and it makes the water of the well bad, he can have the damage put an end to. And if the damage cannot be stopped in any way, he can have the cesspit or sewer closed.

Protection  
of conduit  
from sewage.

Likewise, if the dirty water of a cesspit made by someone near to a conduit, gets to the water of the conduit and causes excessive damage, and the damage cannot be put a stop to in any way other than the closing of the cesspit, it can be made to be closed.



## SECTION III.

*Is about ways.*

1213. If a person has his house on two sides of a road and is going to build a bridge from one to the other, he is prevented. But after he has built it, if there is no injury to a passer by, it is not pulled down.

Making  
bridge  
across.

But in respect of a bridge so built over a public road, and in respect of a balcony, there is no right for it to be permanent.

Therefore, after a bridge built over a public road in the way above mentioned, has been pulled down, if its owner is going to build, he can again be prevented. See Art. 932, 934, Law III of 1885.

1214. Things which are excessive damage to a passer by, like projecting enclosures and balconies which are above a public road, even if they be ancient, are caused to be removed. See Art. 7.

Nuisances.

1215. A person, when he is engaged in the repairing of his house, can make mortar quickly on one side of the road and employ it in his building, on the condition of not causing damage to a passer by.

Use of  
while  
repairing a  
house.

1216. In time of necessity, by command of the Sultan, a man's mulk property can be taken for its value, and joined to the road. But until the price is paid his mulk cannot be taken out of his hands. See Arts. 251 and 262, see 2, C. L. R., 48.

Expropria-  
tion.

1217. A person can take from the Government, at its equivalent price, land of the road which is surplus, and add it to his house, if it does not cause harm to a passer by.

Surplus  
land, pur-  
chase of.

1218. Every one can open a new door on a public road.

Right to  
open door  
on highway.  
Right to  
open door  
on blind  
alley.

1219. A person who has not a right of passage cannot open a new a door on a blind alley.

Rights of  
owners of a  
blind alley.

1220. A blind alley is like the common property of those who have a right of way over it.

Therefore, one of the owners of a blind alley, if he has not the permission of the others, cannot make anything new on that road, whether it causes damage or not.

1221. One of the owners of a blind alley so far as he has not got the leave of the other owners of the road, if he builds anew, cannot let the drip of his house fall on that road.

When owner  
builds anew.



Effect of  
closing door  
on blind  
alley.

Rights of  
public  
over a blind  
alley.

1222. A person's right of passage does not cease by his closing his door on a blind alley.

Therefore, he himself and, if he sells his house, the purchaser, can open the door again.

1223. Those, who have a right of passing along a public road; have a right to enter on a blind alley consequent on there being a great crowd.

Therefore, the owners of a blind alley cannot sell that blind alley by agreement between them. And they cannot divide it between them. And they cannot close its entrance.

#### SECTION IV.

3. Destour,  
87.

*Is about the right of passage over another's property, the right of having a water channel, and the right to discharge water (haq murur and mejra, and mesil).*

Must be of  
time im-  
memorial.

1224. As regards rights of way, rights of having a water channel and the right to discharge water, that which is of time immemorial is observed. That is to say, these are left and continued according to the way they have come from time immemorial.

Because according to Art. 6, a thing is preserved according to its state which is of time immemorial. And as long as there is no proof to the contrary, it must not be changed.

And not  
contrary to  
law.

But that which is contrary to the Sher' Law is not considered to be of time immemorial. That is to say, a thing which has been made, and is in its commencement not according to the Sher' Law, though it be of time immemorial, is not held good, and if there be excessive damage it is removed. See Art. 27.

*For example.*—If the dirty water of a house customarily flow from time immemorial on a public road, and there be damage to the passers by, no attention is paid to its antiquity, and the damage, can be put an end to.

Right of way  
over a  
building  
site.

1225. When someone has a right of way over the building site of another, the owner of the building site cannot prevent him from passing.

A licence is  
revocable.

1226. A person, who has given leave to take and consume gratuitously, has a right to go back from the leave given. And an injury by permission and consent is not irrevocable.

Therefore, when someone has a right of passage over the building site of another, after he has used it for a time by the



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leave of the owner only, the owner, if he wishes, can prevent him from passing.

1227. Where a person has a right of way over a fixed path on the building site of another, and with his leave the owner of the building site makes a new building upon that path, that person's right of passage is at end, he has no longer a right to sue the owner of the building site. See Art. 51.

Right of way lost by leave to build on it.

1228. When someone's water channel or aqueduct flows by right through the building site of another, the owner of the building site cannot prevent it saying, "I will not let it flow hereafter."

Right of owner of ancient water course.

And if it is necessary to repair or clean them, if it is possible, the owner repairs and cleans them by going into the channel.

But in case the cleaning of them is not possible without going on that building site, if its owner does not give permission to go on his building site, he is compelled by the judge, who says "Either give permission to go on the building site, or, repair it yourself."

1229. If the rain water of one house has been falling from the time immemorial on a neighbour's house, the neighbour cannot prevent it, saying, "I will not let it flow after this."

Right of drip on adjoining house.

1230. When the drip from a house, situated on a road, from time immemorial has fallen on that road, and has flowed into a building site situated below that place, the owner of the building site cannot block the ancient course of the water upon his building site. If he does block it, it is made to return to its ancient condition by the judge, by the removal of the blocking.

Right to have rain water run away.

1231. A person cannot make the drip from his new room fall on the house of another.

Drip from new house.

1232. The owner of a house, or, if it is sold, its purchaser, cannot prevent a sewer, which has a right to flow as regards the house, from flowing as before.

Right to a sewer.

1233. If a sewer, which flows by right through a house, causes excessive damage to the owner of the house when it is full, or, on its being broken, the owner of the sewer is compelled to prevent this damage.

Duties of owner of sewer.



3. Destour,  
89.

*Is about the right possessed by all persons to acquire possession by the taking of things, which are not in their origin the property of anyone (Shirket ibaha, Art. 1045). It contains seven sections.*

SECTION I.

*Is about the things which are free to be used by the public and the things which are not.*

Water, grass,  
fire.

1234. Water, grass and fire are free to be used by all. In these three things mankind are partners. Comp. Land Code, sections 10, 11, 24, 97—101 and section 105.

Water  
flowing  
below the  
land.

1235. Water which flows underground is not the mulk property of anyone.

Wells not  
produced  
by particular  
person.

1236. Wells which are habitually used by the public, and have not been produced by the work and care of any particular person, are things which are the common property of mankind and free to all to use.

Seas, big  
lakes.

1237. Seas and big lakes are free to all to use. See Art. 1264.

Public rivers,  
not owned  
as mulk.

1238. Public rivers, which are not held as mulk property, are rivers, which are not divided, that is to say, which do not enter into channels, which are the mulk property of a number of persons.

These also are free for all to use. Like the Nile, Euphrates, Danube and Tunja. See 1, C. L. R., 91. See Art. 1265.

Surplus  
water of  
rivers owned  
as mulk.

1239. Rivers which are owned as mulk, that is to say, rivers which enter into channels which are owned in shares, are of two kinds.

The first kind is those rivers which are distributed and divided among the shareholders.

But to those rivers of this class, which flow on desert places, that is to say, which flow on unowned land, and are not exhausted entirely on the land of the owners, the surplus being free to be used by the public, by reason of their being in a way public, the name public river is given also. And as regards these, there is no right of pre-emption.

The second sort is a private river, the water of which is spread and divided over the land of a limited number of persons, and, being exhausted on arriving at the boundary of their lands, does not flow to unowned places.



In regard to this sort only pre-emption is permitted.

1240. The mud brought by a river on the land of a person is his mulk property. Another cannot interfere with it.

Alluvial deposit is not.

1241. In the same way as grasses which grow wild on land, which has no owner, are free for the use of all, so also grasses which grow wild without anything being done to make them grow, on the mulk property of someone, are free for the use of all.

Grasses which grow without labour on private land.

But as regards this, if that person has done anything to cause it, as if he has watered his field, or in any way has prepared it for the growth of grasses, like making a ditch round it, the grasses which are produced on his land are his own mulk property.

Another person cannot take anything from them. And if he does take and causes loss, he is responsible.

1242. Grass being herbs, which have no trunk, does not include trees. Mushrooms also are like grass.

Not trees.

1243. Trees which grow naturally on mountains, which have not passed into the possession of anyone, that is to say, on mountains which are free for all to use, are free for all to use. (Comp. Law 22 of 1879, and 8 of 1881).

Trees on mountains.

1244. Trees which grow naturally on someone's mulk property are his own mulk property. Without his leave another cannot cause them to be made into fire wood. If he does, he makes compensation.

Trees growing naturally on mulk are not.

1245. If a person grafts a tree, like as the branches which spring from the graft are his own mulk property, so also is their fruit his.

Grafts, ownership of.

1246. Every kind of produce of seed, sown by a man for himself, is his own property (Mal). It cannot be interfered with by anyone.

Things sown, ownership of.

1247. Game is free for the use of all.

Game

## SECTION II.

*Is about the way in which things which are free for the public use are made mulk property.*

1248. The causes of acquiring mulk ownership are three. The first is the transfer of the mulk ownership from one to another as in bey' and gift.

Mulk ownership, how acquired.

The second is the making someone the successor of another, like, inheritance,



The third is for a person who is not owner to acquire a thing, which is free for the use of the public.

This also is either directly, which is to place the hands actually on the thing, or indirectly, which is by preparing a cause for it, like putting a vessel to catch the rain water, and setting a trap for game.

By getting  
the thing.

1249. If anyone obtains a thing, which is free for the use of the public, he becomes absolutely owner of it.

*For example.*—When someone has taken water from a river with a vessel like a jug, or a cask, that water, by being kept and stored in that vessel, becomes the property of that person. No other than he has a right to use it. And if another, without the leave of its owner, takes and consumes it, he makes compensation. See 3, C. L. R., 105.

Must be  
intention to  
take.

1250. It is necessary that the taking be coupled with intention.

Therefore, when a person has put a vessel in a place with the intention of getting rain water, the rain water found inside that vessel becomes the property of that person.

Likewise, water which is in a tank, or cistern built for the purpose of collecting water, is the property of its owner.

But rain water collected inside a vessel, put in a place, without the intention of the person, is not that person's own property. Another person can take it and make it his own. See Art. 2.

Return of  
water must  
be cut off.

1251. In taking the water, it is a condition that its flow (lit. back) be cut.

Therefore, water in a well, which oozes from the inside of it is not taken. Without its owner giving it for the good of the public, if another person take water, which has percolated into a well in this way and collected together, and consumes it, compensation is not necessary.

And likewise, water which is in a tank, the water of which comes consecutively, that is to say, as so much water flows from one side, the same quantity comes from the other, is not acquired. See 3, C. L. R., 105, 121.

Wild grasses,  
how acquir-  
ed.

1252. By collecting grasses which grow wild, and reaping and tying them in bundles, the grasses are acquired.

Firewood  
from wild  
trees.

1253. Anyone can make firewood of the trees, which grow wild on mountains, which are common for the use of all. And by making them firewood only, that is to say, by collecting them



he becomes owner of them. It is not a condition that he should tie them in bundles. (Comp. Cyprus Law 22 of 1879, and 8 of 1881).

### SECTION III.

*Sets out the general rules for things which are free to be used by the public.*

1254. Every one can take benefit from a thing, which is free to be used by the public, but on the condition that he does not cause damage to another.

Right of user.

1255. One person cannot prevent another person from taking a thing, which is free to be used by the public.

No exclusive right.

1256. Every one can feed his animal on the grasses which grow naturally on unowned land, and can take as much of them as he likes.

Grass on unowned land.

1257. Although grasses also which grow wild on the mulk property of a person, without his doing anything to cause them to grow (Art. 1241), are free for the public benefit, its owner can prevent another from entering on his own mulk. See 3, C. L. R., 105.

Wild grasses on mulk.

1258. If another person takes someone's firewood, which he has collected from the mountains belonging to mankind, and left there, that person can demand them back.

Right to firewood collected.

1259. Every one can gather the fruit of trees, which are without owner and are in the mountains which are the property of mankind, and in valleys without owners, and in mer'as.

Fruit of unowned trees.

1260. If a person hires someone to collect firewood for him from the uncultivated country, or to catch game, the wood collected and the game caught by the hired person, belong to the hirer.

Wood collected and game caught by hired person.

1261. If a person light a fire on his own mulk property, he can prevent another's coming on his mulk property and using it.

Fires.

But if a person lights a fire in an open place which is not anyone's property, other persons can take benefit from it, so that they can warm themselves by it, and can sew a thing by the light of it, and can light their candles at it. The owner of the



fire cannot prevent them. But without the leave of the owner of the fire a person cannot take a live coal from that fire. See 3, C. L. R., 105.

#### SECTION IV.

*Explains the right to a turn in taking water for watering (Shurb) and the right of drinking (shefe).*

Shurb  
defined.

1262. "Shurb" is the turn for making use of water for watering crops and animals. See 3, C. L. R., 105.

Haq Shefe.

1263. "Haq shefe" is what the right to drink water, is called.

Seas and big  
lakes.

1264. In the same way as every one has the benefit of the light and air; so also he can take benefit from the seas and big lakes.

Rivers which  
are unown-  
ed.

1265. Every one can irrigate his fields from rivers which are not owned by anyone, and can open a canal or water channel to irrigate his field, and to build a mill. But it is a condition that he must not damage another.

Therefore, if he cause damage to the public by the overflowing of the water, or the water of the river is entirely cut off, or if he prevents the movement of boats, he is prohibited.

Water not  
stored.

1266. As regards water which has not been acquired there is a right for all men and animals to drink. See Arts. 1249—1251.

Streams,  
channels,  
pipes and  
wells.

1267. The right of watering animals and crops from streams which are mulk property, that is to say, from water which enters into a channel which is mulk property, belongs to the owner of it.

Others have a right of drinking in them.

Therefore, from a river which is the special property of a number of persons, or from a man's water channel, or his water pipe or his well, without permission, another cannot irrigate his land. But he can drink the water, by reason of his having right of drinking (Haq shefe).

And if there is no fear of the destruction of the river, or water channel, or pipe by reason of the number of the animals, he can bring his animals there and water them.

And moreover he can get water with a jug, or barrel and take it to his house or garden. See 3, C. L. R., 105.



1268. In case there is a tank, or a well, or a river in some one's mulk property, and fresh water comes in as water goes out, that person can prevent anyone, who wishes to drink water from entering into his mulk.

Tanks, wells and streams situated in mulk property.

But if there is no water free to the public for the other to drink near the place, the owner of the property must either take him the water, or give him leave to enter and take water. And if he does not take him the water, the other person has a right to come in and take the water, but on the condition that he does not cause risk, that is to say, it is a condition that he does not cause damage, like spoiling the the edge of the tank, or well, or river.

1269. One of the co-owners of a river held in common cannot open another river, that is to say, a water channel or conduit, from it, without the leave of the other owners. And the ancient turn (to take water) cannot be changed. And he cannot send his turn into his other lands, not having the right of irrigation from that river. And if the other joint owners give their consent to this, afterwards, either themselves, or their heirs, can go back from it. See 1, C. L. R., 91, 3, C. L. R., 105.

Rights of co-owners.

## SECTION V.

*Is about the improvement (ihya) of arazi-mevat.*

1270. "Arazi-mevat" is those lands which are not the mulk property of anyone, and are not the mer'a of a town or village, or for their collecting firewood, that is to say, the locality in which the inhabitants of a town or village have a right to cut firewood, and are far from the distant parts of a village or town, that is to say, the sound of a person who has a loud voice cannot be heard from the houses which are at the extreme limit of the town or village. See 2, C. L. R., 64, 3, C. L. R. 87 and 105. Land Code sections 6, 103.

Arazi-mevat what is.

1271. Places which are near towns are left to be grazing grounds, and places for threshing floors, and places for getting wood.

Arazi-metrake distinguished.

These lands are called arazi-metrake. See 3, C. L. R., 87, Land Code sections 5, 91.

1272. If a person, with the leave of the Sultan, takes and improves (Art. 1275), a place from arazi-mevat he becomes the mulk owner of it.

Acquisition of mulk ownership.



Acquisition  
of right of  
disposition  
(tassaruf.)

And if the Sultan or his representative gives permission to someone to improve that land, upon the condition that he is to have the use of the land only, and not to have the ownership, that person, in the way he has received permission, has the right of disposition (tassaruf) over that land, but he does not become mulk owner of that land. See 3, C. L. R., 87. Semble.—If the Sultan gives leave to sink a well, or make a watercourse in arazi-mevat (head note to sec. 6) the person who sinks the well, or makes the watercourse becomes mulk owner of the harim (Art. 1286.)]

When part  
only of the  
land is re-  
claimed.

1273. When a person has improved a quantity of a piece of land, and the remainder of it is left, the remainder does not belong to him, who is the mulk owner of the places improved. But if there remains a quantity of hali land in the middle of the land which he has improved, that land also belongs to him.

Right of  
way.

1274. After someone has improved land from arazi-mevat, if others also come and improve the lands which are on his four boundaries, a road for the first person is set apart in the lands of him who improved last, that is to say, there is a road for him from there.

Improve-  
ment, what  
is, sowing,  
etc.

1275. The sowing of seed and the planting of young trees are the improving (ihya) of a place and so is, the ploughing of it twice for sowing, or the irrigation, or the making of a water channel, or conduit for the irrigation.

Making,  
a dam  
against rain  
water.

1276. If a man makes a wall round a place of arazi-mevat, or raises and makes a dam around it which will protect it from the rain water, that place has been improved.

Enclosing,  
clearing and  
sinking a  
well are not  
reclaiming.

1277. Putting stones or thorns or the dead branches of trees to enclose the four sides of land, or to clear away the grasses of the land, or to burn the thorns which are in it, or to sink a well, is not called improving the land, it is only enclosing it.

Making a  
bank which  
will not  
keep out  
water is  
enclosing.

1278. If a person cut the grasses or thorns on arazi-mevat, and merely puts them round the land and puts earth on them, and does not complete a dam in a way that will keep out the overflowing water, that land is not improved, but it is enclosed.

Right of  
person who  
enclosing.

1279. If a man encloses a place from arazi-mevat he has a better right to that land than others for three years. If he has not improved it in three years, his right does not remain, and it can be given to another to improve. Land Code, sec. 103.



1280. A well which a person has sunk an arazi-mevat by the leave of the Sultan becomes his own mulk property. See 3, C. L. R., 105.

Well sunk on arazi-mevat.

## SECTION VI.

*Is about the harim of wells dug, water made to flow, and trees planted in arazi-mevat by the leave of the Sultan.*

1281. The harim of a well, i.e., rights of its circuit, are forty arshuns on every side. See 2 C.L.R., 64, 3, C.L.R., 105.

Harim of wells.

1282. Of springs, that is to say, of sources, the waters of which, are drawn from a place, and flow on the face of the earth, the harim is 500 arshuns on each side. See 2, C.L.R., 64, 3, C.L.R., 105.

Harims of springs.

1283. Of a great river, which does not want to be often cleaned, its harim, on two sides, is as much as half the river, and the quantity of the harim on the two sides is equal to the breadth of the river. See 3, C.L.R., 105.

Harim of a great river.

1284. Of a small river often requiring to be cleaned, that is to say, of water channels, and canals, and also water pipes and conduits (qanat), which are underground, the harim is land sufficient to throw the stones and mud upon when they shall be cleaned. See 3, C.L.R., 105.

Harim of water channels and pipes underground.

1285. Of water pipes or under-ground conduits (qanat) whose water flows on the surface of the earth, the harim is like that of springs, it is 500 arshuns from every side. See 3, C.L.R., 105.

Harim water pipes when water comes to the surface.

1286. The harim of wells is the mulk property of the owners. Another person cannot exercise control over it in any way. If someone in another's harim sinks a well the other can cause it to be closed.

The Harim round water is the mulk property of owner.

The harims of springs and rivers and water conduits are also in accordance with this. See 3, C. L. R. 105, Law VI, of 1896 IV of 1897.

1287. If another dig a well, with the leave of the Sultan, near the harim of a well, the harim of this well also on the other sides is forty arshuns. But on the side of the first well it cannot pass beyond its harim.

Harim of new well near Harim of old one.

1288. If someone sinks a well outside the harim of a well, and the water of the first well goes to this well, it is not necessary to do anything. Like as, when someone opens a shop near another's shop, and there is a falling off in the trade of the first shop, the second shop cannot be closed.

New well drying up old well.



Harim of a tree.

1289. The harim of a tree, which has been planted, by the leave of the Sultan, in arazi-mevat, is five arshuns on every side. Within this distance another cannot plant a tree.

Banks of water channel in building site of another.

1290. The banks of a water channel which flows in the building site of another, belong up to where it holds the water, to the owner of the channel.

And if he raises the banks on the two sides, these raised lands also belong to the owner of the channel.

And if the banks have not been raised, and there is no other evidence of one of them having taken possession, such as the owner of the building site, or, the owner of the channel, having planted trees upon them, in that case, those places belong to the owner of the building site. But the owner of the channel, when he shall clean his channel, has the right to throw its mud on the two sides.

Well in mulk property.

1291. There is no harim to a well which has been dug by someone on his own mulk property. His neighbour can dig another well near it on his own mulk. And the first person cannot prevent the digging of that well, saying "it takes the water of my well." See 2, C.L.R., 64, 3, C.L.R., 105.

## SECTION VII.

*Sets out some precepts relating to the rights of game.*

Right to take.

1292. It is lawful to take game with a weapon that wounds, like a spear, or a gun, or with things like a net or a trap, or with animals, with teeth like a trained hound, or birds of prey, like a trained hawk, Laws IX of 1879, II of 1884, VII of 1884, III of 1887 (Moufflon), XV of 1890, VIII of 1898.

Game, what is. Animals which have been reclaimed cannot be taken.

1293. Game is a wild animal which is afraid of man.

1294. In the same way as a tame animal cannot be hunted, so wild animals which are familiarised with men must not be hunted.

Therefore, if a stag be taken with a strap on its neck, or a hawk with a bell on its foot, or a pigeon which is known not to be wild by like signs, the person, who takes it, must publish it, in order that he may give it back to the owner, when he is known, as being like a thing found by chance.

Animals must be able to escape.

1295. It is necessary that game be not in reach of man, that is to say, that it be in a state, in which it can get away with its feet, or wings, and escape.



If it be placed in a state where it cannot get away and escape, for example, if a stag has fallen into a well, it ceases to be in the condition of game.

1296. Whoever takes game out of the condition of the game has taken it.

1297. Game is the property of the man who takes it.

*For example.*—If someone shoots at game and wounds it in such a way that it cannot get away and escape, he becomes the owner of it. But by wounding it slightly, that is to say, in such a way that it can get away and escape, he does not become owner of it, and if another person hit it or take it in any other way, he becomes the owner of it.

And likewise, after someone has hit game and made it fall, while it is getting up and escaping, another person can make it his property by taking it.

1298. If the bullets of two sportsmen strike a thing which is game at the same time, that game is owned in common between them in equal shares.

1299. When two persons loose two trained hounds, and the two of them catch one thing which is game, that game likewise is owned in common between the owners of the hounds. And if each of them catches game for itself, the game caught by each belongs to its owner.

Likewise, if two persons loose their two trained hounds, in the event of one of them bringing down the game and the other killing it, if the hound of the first put the game in a condition that it cannot run away and escape, the game belongs to him.

1300. Fish which are in the channel or canal of a person cannot be kept unless they are caught, another person, by fishing for them, can possess himself of them.

1301. When someone has prepared a place for fishing on the water side, and makes fish come there, if the water gets low and he can take those fish without the necessity of fishing, those fish become the property of that person.

But if in consequence of the quantity of the water in that place, the taking of the fish requires fishing, those fish are not the property of that person, another person can catch them and possess himself of them.

1302. If game goes into the house of a person and he shuts the door to catch it, he becomes the owner of it,

Game when taken.

Belongs to person who takes it.

Shot by two persons at same time.

Killed by trained hounds of two persons.

Fish, right to.

Preparing ground for fishing.

Game going into a house,



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But by shutting the door without catching it, he does not become owner, if another person catch that game, he is owner of it.

Snaring.

1303. When a person places a thing, like a net or snare, in a place to catch game, if game is caught, it becomes the property of that person.

But if someone lays out his net in a place to dry, and game is caught in it, that game does not become his property.

In the same way a person can take and possess himself of game, which falls in a hole, which is in another person's land.

But if the owner of that land has dug that hole to catch game, he has a better right than others to that game. See Art. 1250.

Wild bird  
making  
nest in  
garden.

1304. A wild bird by making its nest in someone's garden and by laying eggs, does not become his property. If another, person take its eggs or its young, the owner of the garden cannot demand them back.

But if that person has prepared his garden for wild birds to come and lay eggs and breed, the eggs and young of wild birds, which came there and lay eggs and breed, belong to him.

Bees in  
garden.

1305. Honey made by bees, who have taken a place in a person's garden, is counted one of the benefits of the garden and belongs to that person. Another person cannot interfere with it.

It is only necessary to give the tithe of it to the Treasury.

Bees in  
hive.

1306. Bees, which are in a person's hive, are considered as property held. The honey of these also is the property of that person.

Swarm of  
bees.

1307. If a swarm of bees from the hive of one person, settles in the house of another person, and the owner of the house takes it, the owner of the hive can demand them back.

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## CHAPTER V.

*Is about the maintenance of property by persons possessed of shares in it and contains two sections.*

### SECTION I.

*Is about the repair of property, in which shares are possessed by several, and certain other expenses.*

Repairs.

1308. When there is need for repair of property held in common, its owners do the repairs, by common action, in proportion to their shares,



1309. If one shareholder, with the leave of the other, repair the common property, spending from his own estate a reasonable amount, he has recourse to his co-owner for his share.

That is to say, whatever part of the expenditure falls on the share of his co-owner, he recovers that from him.

1310. When there is absent one of the owners of property held in common which needs repair, if the other wishes to repair it, he obtains leave from the judge. And the leave of the judge stands in the place of the leave of the shareholder who is absent.

That is to say, when the shareholder who is present has, with the leave of the judge, repaired that property held in common, he is as if he had had the consent of his co-owner, and has recourse to him for his share.

1311. If someone, without asking the permission of his co-owner or the judge, repair, of his own accord, property held in common, he becomes a giver.

That is to say, he cannot recover from his co-owner the amount of the expenditure which falls upon his share, whether that property held in common be capable of division or not (Art. 1131).

1312. If a person wish to repair property which he owns in common with another, and which is capable of partition (Art. 1131), and when his co-owner refuses permission, repairs it of his own accord, he becomes a giver.

That is to say, he cannot have recourse to his co-owner for his share.

And if that person, upon his co-owner refusing in this way, makes an application to the judge, in accordance with Art. 25, there cannot be an order for the repairs. But, by order, a partition can be made, and after the partition that person can do what he likes to his own share.

1313. When there is need for repair of a property owned in common which is not capable of partition, like a mill or a bath, and one of the owners wishes to repair it, if his co-owner objects, with the leave of the judge it can be repaired by himself with the expenditure of a reasonable amount of money. And he recovers from his co-owner the amount of the expense of the repairs, which falls to his share. And by letting that property held in common, he can be paid the amount he has to receive from its rent.

Repairs done by one, by leave of the other.

Repairs, when one co-owner absent, by leave of judge.

Repair by one co-owner without permission.

Property capable of partition and co-owner refusing leave to repair.

Property not capable of partition and co-owner refusing leave to repair.

And if he has done the repairs without obtaining the leave of



the judge, attention is not paid to the amount which has been expended, only he can be paid in the way above mentioned, the amount of the value of the building when repaired, which falls to the share of his co-owner.

Destruction  
of property  
not capable  
of division.

1314. So when property owned in common, not being capable of partition, such as a mill or a bath, is entirely destroyed, in case it remains a mere building site, and one of the owners wishes to build, if the other objects, a compulsory order for building is not made, their building site is divided.

Building  
owned in  
storeys  
destroyed.

1315. When a building is destroyed or burnt, the upper storey of which belongs to one person and the lower storey to another person, each one can make his building as it was before. Neither of them can prevent the other. And if the owner of the upper storey say to the owner of the lower storey "You make your building and I will make my building upon it," and the owner of the lower storey refuse, the owner of the upper storey obtains the leave of the judge, and when he has built both the upper and lower buildings, until the owner of the lower storey has paid his share of the expense, he is prohibited from using and disposing of the lower storey.

Wall owned  
in common.

1316. When there are burdens, like the ends of joists or the balcony of two parties, upon a wall owned in common, which is between two neighbours, and the wall is destroyed, if upon the refusal of one the other builds, the one prevents the other from placing a burden upon that wall until he has paid the half of the expense.

Party wall.

1317. When a wall which is between two houses falls down, and from the one of them the women's quarters of the other is seen, and if in consequence of what has happened, the owner of the one has wished to build the wall at the common expense, and the owner of the other refuses he cannot be compelled to build. But the making by them of a screen between them of wood, or other material, at their joint expense, is enforced by the judge.

Dangerous  
wall.

1318. When weakness comes to a wall which is jointly owned between two neighbours. And if, for fear of its falling, one has wished to pull it down and the other refuses, they are compelled to pull it down and demolish it by joint action.

Vafq and  
infant's  
property.

1319. When there is need to repair immovable property, which is jointly owned between two vafqs, or two infants, in case there is danger in keeping it in the state in which it is, and



one of the two guardians, or two Mutevellis, wishes to repair it and the other refuses, he is compelled to repair.

*For example.*—When there is a common wall between the houses of two infants, and being afraid of its falling the guardian of one of them has wished to repair it, if the guardian of the other refuses, it is inspected by a trustworthy person sent by the judge. If it is made clear that there will be damage as regards the infants, in case the wall remains in the state in which it is, the guardian, who objects, is compelled to repair that wall, from the property of the infant, jointly with the other guardian.

Likewise, where there is need for the repair of a house jointly owned between two vaqfs, in case one of the Mutevellis has wished to repair it, if the other refuses, he is compelled by the judge to make the repairs from the property of the vaqf.

1320. When an animal is owned in common between two persons, and, by reason of one of them refusing to feed it, the other makes an application to the judge, the judge makes an order, saying to the part-owner who refuses "Sell your share or feed the animal jointly with your co-owner."

Animal,  
feeding of.

## SECTION II

*Is about the cleansing and repair of rivers and water channels.*

1321. Of a river which is not owned as property, the cleansing and repair, that is to say, the up-keep is on the Beit-ul-mal.

Unowned  
rivers.

And if the Beit-ul-mal has not the ability to do it, the people are compelled to keep it up. See Art. 1238.

1322. The up-keep of a river, which is owned as property, and is possessed in common, falls on its owners, that is to say, on those who have a right to a turn to take water to water their crops and animals (Haqq shurb, Arts. 143, 1262).

Rivers  
owned as  
joint  
property.

Those who have a right to take water to drink (Haqq shefe, Art. 1263), cannot be made to share in providing for the cleansing and repairs. (As to what are rivers owned as property. See Art. 1239).

1323. If some of the owners of a Haqq shurb (Art. 1262), desires to cleanse a river held in common and others of them refuse, consideration is taken.

River which  
is owned  
in common.

If it is a public river (Art. 1239), the person who refuses is compelled to keep up the river by common action with the others. See Art. 26.



Shirket  
emwal.

Thus, if the partners each put a quantity of property to be the common capital, either together, or, separately, or in any way and make a contract of partnership, on the condition of trading and dividing between them the resulting profit, it is a "Shirket emwal."

Shirket  
a'mal.

Shirket  
ebdan.

Snirket  
sana'i

Shirket  
taqabbul.

And if their labour is their capital, and if they accept, that is to say, undertake work for another, and make a contract of partnership, upon the condition that they are to divide between them the profit arising from it, that is to say, their pay, it is a "Shirkat a'mal. "This is also called "Shirket ebdan," (partnership of persons) and "Shirket sana'i" (partnership of art) "Shirket Taqabbul" (partnership for undertaking.)

Shirket  
vujuh.

Thus, it is like the making of a partnership between two tailors, or, a dyer and a tailor.

And if there is no capital, and they buy property on their own personal credit, and sell, and make a contract of partnership, on the terms that they are to divide the profit, which results, between them, it is a "Shirket vujuh".

## SECTION II.

*Is about the general stipulations in a contract of partnership.*

Partner is  
an agent.

1333. Every kind of partnership by contract contains a contract of agency.

Therefore, every one of the partners in the dispositions made by him, that is to say, in trading and in accepting work, from another for hire, is the agent of the other.

Therefore, as in every contract of agency there is a condition for reason and discernment, so universally in partnership also there is a condition for the partners having reason and being of understanding (Mumeyyiz, Art. 943).

In Shirket  
mufaveza a  
guarantee.

1334. Shirket mufaveza (Art. 1331), also contains a contract of suretyship.

Therefore, it is a condition that partners on equal terms (mufavezin) should also be competent to make a contract of suretyship.

In Shirket  
'inan agency  
only.

1335. Shirket inan (Art. 1331), only contains a contract of agency, there is no contract of suretyship.

Therefore, if at the time of their making the contract for it, there has been no mention of suretyship, the partners are not sureties the one for the other.



For this reason an infant who has permission (me'zun), can make a contract of Shirket 'inan (Art. 1331).

But if mention has been made of suretyship, at the time of making a contract of Shirket inan, the partners are sureties the one for the other.

1336. It is a condition that it should be declared in what way the profit is to be divided between the partners. If this is doubtful or unknown the partnership is fasid (Art. 109).

1337. It is a condition, that the shares of the profit, to be divided between the shareholders, be known by division, like a half, or a third, or a fourth.

If it is agreed that so many piastres, as a fixed amount, be given from the profit to one of the partners, the partnership is void (batil).

Manner of sharing profit must be declared.

Shares of profit how fixed.

### SECTION III.

*Is about the special conditions of a Shirket emwal (Art. 1332).*

1338. It is a condition that the capital be some kind of silver or gold money.

Capital must be gold or silver money.  
On current brass coin.

1339. Brass coins which pass current are by custom considered to be silver or gold.

1340. If there is a use and custom amongst the people to transact their business with gold and silver, which has not been coined, this also is regarded as gold and silver coins. If there is no such use and custom they are regarded as merchandise ('aruz, Art. 131).

Or, uncoined gold and silver where custom.

1341. It is a condition that the capital be a thing, which is known and individually perceptible 'ayn, Art. 159).

Capital cannot be chose in action.

A debt, that is to say, what will be received being on account of debts due from people, cannot be the capital of a partnership.

*For example.*—When two persons take for capital what they have to receive on account of the debt of a third person, they cannot make a contract of partnership about it.

And if the capital of one is corporeal property (ayn, Art. 159), and the capital of the other is a debt, again the partnership is not good.

1342. A contract of partnership in respect of property which is not considered gold and silver coin, like merchandise, and immovable property, cannot be good. That is to say, these things cannot be the capital of a partnership.

As to property other than gold and silver coin being capital,



But when two persons wish in this way to make their property, which is not of the nature of gold and silver coin, the capital of a partnership, each of them sells to the other the half of his property, and after they have become their common property, they can make a contract of partnership in respect of this property held in common between them.

Likewise, when two persons have mixed together properties, which they have, of a kind which is misly (Art. 145), like a quantity of wheat, which each of them have, after it has become Shirket-i-mulk (Art. 1045), between them, they can use as capital that mixed property, and make a contract of partnership about it.

Horse and harness.

1343. When a horse belongs to one and the harness to another, if they have become partners to divide between them the hire, which arises from letting them out, the partnership is fasid (Art. 109). The hire produced belongs to the owner of the horse. And by reason of the harness being subject to the horse, its owner is not a shareholder in the hire, he only takes an equivalent payment for the use of the harness.

Horse and merchandise.

1344. If persons become partners to load the merchandise of one on the animal of the other, and take it round to show and sell, and to have the profits in common between them, the partnership is fasid (Art. 109), and the profit, which is produced, belongs to the owner of the merchandise.

The owner of the animal takes an equivalent hire for the use of his animal.

Shop and goods.

A shop also is like an animal. And if people become partners upon the terms, that they shall divide the profit between them, when they have sold the goods of one in the shop of the other, the partnership is fasid (Art. 109). The profit from the goods belongs to their owner. The owner of the shop also takes an equivalent rent for the use of the shop. (Comp. Art. 1346).

#### SECTION IV.

*Is about certain rules relating to a partnership by contract.*

Work valued at its worth.

1345. Work is constituted by the way in which it is done. That is to say, work is valued by its value which is made known. And the work of one person can be more valuable than the work of another.

*For example.*—When it has been agreed, that the capital of two persons who are partners by a Shirket'inan (Art. 1331), are to be equal, and that the two of them are to work, if a condition



is made to give a larger share of the profit to one, it is lawful. Because the one can be more skilful in business, and more able to work and useful.

1346. Responsibility for work is a kind of work.

Responsibility for work is a kind of work.

Therefore, if someone puts a person who is a skilled artizan in shop, and makes him do work which he has accepted and undertaken; if they make a contract of partnership in skilled labour (Shirket sana'i), upon the terms, that they are to divide equally between them, the profit which shall be produced, that is to say, the payment, it is lawful. And the right of the owner of the shop to the half share is by reason of his having become responsible for the work alone, although included in this he takes also for the use of his shop. (Art. 1344).

1347. In the same way as the right to profit has come sometimes from property or work, so sometimes (in accordance with Art. 85) it arises in consequence of responsibility.

Where one partner gives property or is responsible and the other gives work.

Likewise, in a mudarebe (Art. 1304) the partner who supplies the capital, by the property, and the party who supplies the labour, by the labour, becomes entitled to the profit.

And when one is the apprentice of a skilled workman, if he makes him do the work, which he has undertaken, for half pay, it is lawful.

And as the apprentice is entitled by his work to half the profit, *i.e.*, half the pay taken from the owner of the work, so also by reason of his responsibility and undertaking his master, is entitled to the other half.

1348. If one of the three matters above-mentioned, *i.e.*, property, work and responsibility is not found, there is no right to the profit.

No profit without property, labour or responsibility.

Therefore, if one says to another, "Trade with your property and let the profits be shared between us," there, partnership does not follow, and he cannot take a share of the profit, which arises in this case.

1349. The right to profit is according to the stipulation stated at the time of making the contract of partnership, alone. It is not according to the work done,

Division of profit.

Therefore, even if the partner, who it was agreed should do the work, does not do the work, he is considered as if he had done the work.

*For example.*—Where two people have become partners by a valid partnership, and it has been stipulated that both should work, and only one works and the other, with or without excuse,



does not work, by reason of their being agents for one another, he himself is considered as if he had done work, by reason of the work of his partner.

The profit in the way stipulated is divided between them.

Liability of partner for custody of partnership property.

1350. Partners are persons entrusted (emin) the one by the other. The partnership property in the possession of each of them is like a thing entrusted (Vedi'a, Art. 762).

If partnership property in the hands of one of them is destroyed without fault or neglect, he is not responsible for the share of his partner.

Effect of capital being found by both or one of the partners.

1351. In Shirket émwál (Art. 1332), the capital becomes joint property between the partners either in equal or unequal shares.

But when the capital is given by one, and the labour by the other if it is agreed that the profit is to be common property between them, it is a mudarabe (Art. 1404).

This comes in a special chapter (Chapter 7). And if the profit belongs entirely to the person who works, it is a loan. And if it has been stipulated that the profit should belong wholly to the owner of the capital, that capital is capital of another (bida'a, Art. 1059), in the hands of the workman, and the workman is mustebda' (Art. 1059).

If he is mustebda' since he is like an unpaid agent, the profit and loss wholly fall on the owner of the property.

Dissolved by madness or death.

1352. If one of the partners dies or becomes mad with incessant madness, the partnership is dissolved.

But when there are three or more partners the dissolution of the partnership extends as far as the dead or mad partner, the partnership continues between the others.

Dissolved by revocation of one partner.

1353. A partnership is dissolved by the revocation of one of the partners. But it is a condition that the other should know of its dissolution. When one has dissolved the partnership, the partnership is not dissolved until the other knows.

Division after dissolution.

1354. When the partners dissolve a partnership, if they make a division upon the terms that the money in hand is to belong to one, and the amount, which will be recovered on account of debts, to the other, the division is not good.

In this case, the second becomes joint owner of what the one receives from the money in hand, and what they will receive on account of debts is also owned in common between them (See Art. 1123).



1355. If one of the partners receives a quantity of the partnership property, and while he is using it, without its being known, he dies, the share of his co-partner is paid from his estate (tereke). (See Art. 801).

Liability of estate of deceased partner.

### SECTION V

*Is about Shirket mufaveza (a partnership in which the partners have equal shares of the capital and profit, Art. 1331).*

1356. Partners with equal interests are sureties for one another as has been explained in section II.

Act of one partner binds the other.

Therefore, the admission of one of them is as effective against his partner as it is against himself.

And if one of them has admitted a debt, the person, in whose favour the admission was made, can demand it from whichever of them he chooses. And if there arises any kind of debt for one of the partners equally interested, on account of transactions lawful in partnership, like selling, buying and letting, it is binding also on the other.

And as a thing which has been sold by the one can be returned for a defect to the other, so the other can return for a defect a thing, which has been bought by the one.

1357. Food and clothes and other indispensable necessities taken by a mufaviz (partner equally interested) for himself, or his wife, or family, are his own. His partner has no right over them.

Private estate.

But the seller can claim from his partner the price of these by reason of the contract of suretyship.

1358. As it is a condition that the shares, of partners equally interested (mufaviz) in a Shirket emwal (Art. 1332), should be equal both in the amount of the capital and the profit, so it is a condition that one of them should not have property capable of being partnership capital, i.e., money or property considered as money, beyond the capital of the partnership.

Shirket emwal when mufaveza.

But if one of them has, beyond the capital of the partnership, property which cannot be partnership capital, e.g., merchandise, or immovable property, or money due on account of the debt of another person, it does no harm to the equality of their interests.

1359. In Shirket a'mal (Art. 1332), it becomes mufaveza, if the contract of partnership is made upon the condition, that each of the partners can undertake any sort of work, and that the responsibility for the work is to be equal, and that they are to

Shirket a'mal when mufaveza.



share equally in profit and loss, and if any obligation arises by reason of the partnership, the one is to be surety for the other.

In this case the hire of a workman, or shop, can be demanded from any of them. And when another person claims merchandise from them, and one of them has made an admission, if the other denies, still the admission is effectual.

Shirket  
vujuh when  
mufaveza.

1360. There is mufaveza of Shirket vujuh (Art. 1332), if two persons make a contract of partnership upon the condition that they are to buy and sell property on credit, and that property bought, and the price of property sold, and the profit, is to be jointly owned in equal shares between them, and each is to be surety for the other.

Partnership,  
construction  
of.

1361. In making a contract "mufaveza," it is a condition that the word "mufaveza" should be spoken, or that all the conditions of its being mufaveza should be enumerated.

If a contract of partnership is made generally it is 'inan (Art. 1331).

If one of the conditions, mentioned above in this section, is not found, the mufaveza becomes 'inan (Art. 1331).

*For example.*—In Shirket emwal (Art. 1332), if property by gift, or inheritance, has passed into the hands of one of the mufaviz partners, and if the property is capable of being partnership capital, like money the mufaveza is changed into 'inan (Art. 1331).

But if the property is not capable of being partnership property, like merchandise and immovable property, it does not injure the mufaveza.

Conditions  
of validity.

1363. Whatever is a condition of the validity of a Shirket 'inan (Art. 1331), is a condition of the validity of Shirket mufaveza. (See next Sec.)

Authority of  
partner.

1364. Whatever a partner in a Shirket 'inan (Art. 1331), can do by way of disposing of property, that also a partner in a Shirket mufaveza can do.

## SECTION VI.

*Is about Shirket 'inan (a partnership without a condition made that the partners are to be equal in everything Art. 1331.) It contains three sub-sections.*

### SUB-SECTION I.

*Sets out some precepts about Shirket emwal (Art. 1332).*

The capital  
of the par-  
nership.

1365. There is no condition that the capital of those, who are partners by Shirket 'inan (Art. 1331), shall be equal. The capital of the one can be greater than the capital of the other.



And each one is not compelled to put into the capital the whole of his money.

It is possible to make a contract of partnership to affect the whole of their properties, or, an amount of each of them.

Therefore, they can have property like money, which is capable of being capital of a partnership, in excess of the capital.

1366. In the same way as a contract of partnership for general trade is lawful, so also it is possible to make a contract of partnership for some special sort of trade, like the providing of corn.

1367. In a valid partnership, if the division of the profit in any way is made a condition, in every case that condition is observed.

1368. In a partnership which is fasid (Art. 103), the profit and benefit is divided according to the amount of capital introduced. If a stipulation has been made for a greater quantity to be given to one of the partners, attention is not paid to it.

1369. In every case when damage or loss takes place without fault or neglect, it is distributed according to the quantity of capital introduced. If a stipulation in any other way is made it is not observed.

1370. Whether the capital introduced be equal or unequal, if the partners make a stipulation to divide the profit between them in proportion to the capital introduced, it is good, and the profit is divided between them according to the amount of the capital they have introduced, in the way they have stipulated, whether it is agreed that both should work or only one should work, so far is this so, that in case it has been agreed that one only should work, the capital in his hands is looked upon as (bida'a, Art. 1059) capital given to him in order that, the profit may come entirely to the person who brought it in.

1371. In case the capital brought in by the partners has been equal, and it has been agreed that a greater part of the profit, e.g., two-thirds, should go to one of the partners, even if it has been agreed that both should work, the partnership is valid and the stipulation is to be observed. See Art. 1345.

But if it has been agreed that only one of them should work, it is considered.

If it has been agreed that the work should fall upon the partner whose share of the profit is greater, again the partnership is good and the stipulation is observed. And that partner is entitled, by his property, to the profit from his capital and, by his labour, to the excess.

But the capital of his partner in his hands is like property in a

Partnership business.

Division of profit.

In fasid partnership.

Division of loss.

Agreement to divide profits in proportion to capital.

Where capital equal and profits unequal.



mudarebe (Art. 1404), and there is a partnership like a mudarebe (Art. 1404).

And if it has been agreed that the work should fall on the partner who has a small share of the profit, it is not lawful, and the profit is divided between them according to the amount of the capital brought in by them. Because if the profit is divided according to the agreement made, the excess, which the partner who does not work, will take, is not an equivalent for property, work or responsibility. If there is a right to profit, it is only from one of these three things. See Arts. 1347, 1348.

Where capital unequal and profits equal.

1372. When the capital of the partners is unequal (for example, when the capital of the one is 100,000 piastres and the capital of the other 150,000 piastres), and it has been agreed that the division of the profit shall be equal between them, it is as if an agreement had been made for a greater share of profit to be given to one, when the shares of the partners are equal, because it is agreed that the one with less capital shall take a share of the profit, which is greater than the share which is proportional to his capital.

Therefore, if it is agreed that both should work, or that the one whose share of the profit is greater, i.e., the one whose capital is less shall work, the partnership is valid and the stipulation is observed.

And if it has been agreed that only the partner whose share of the profit is small, i.e., whose share of the capital is large, shall work, it is not lawful, the profit must be divided in proportion to the amount of their capital between them.

Partner can sell partnership property.

1373. Each of the partners can sell the partnership property either for ready money, or on credit, and for a small, or large price.

Partner buying for partnership.

1374. When the capital of the partnership is in the hands of any of the partners, he can buy property both for ready money and credit.

But if he buys under an excessive deception (Art. 165), as to the value, the property bought belongs to himself, it does not belong to the partnership.

Partners buying for partnership.

1375. A partner cannot buy property on behalf of the partnership, when the capital of the partnership is not in his possession. If he does, that property belongs to him.

When things bought by partner belong to the partnership.

1376. When one of the partners has bought with his own money a thing which is not of the kind in which they trade, that property belongs to himself, the partnership does not share in it.



But if one of them, while the capital of the partnership is in his possession, buy with his own money property, which is of the sort in which they trade, it also belongs to the partnership.

*For example.*—If one of two persons, who have made a contract of partnership to carry on a silk mercer's business buy with his own money a horse, it is his own, the partnership has no share in that horse. But if he buys a piece of silk, it belongs to the partnership.

And if he takes witnesses while he buys and says. "This cloth for myself and I am buying, the partnership has no share in it," it is not binding, that cloth is owned in common by the partners between them.

1377. The rights under a contract belong only to the person who contracts.

Therefore, where property has been bought by one of the partners, it is only obligatory on him to pay the price and to take it. The price of property bought by one, in this way, can only be claimed from him, it cannot be claimed from the partnership.

Likewise, where property has been sold by one of the partners, the right to receive its price is his alone.

In this way if the buyer pay the price to another, he is only released from the share of the partner who receives the money, he is not released from the share of the partner who contracted with him.

And again, in like manner, if the partner, who is the contracting party, appoint another person his agent to receive the price of property sold, his partner cannot dismiss him.

But one partner can dismiss a person appointed agent by the other partner for the purpose of buying (bey', Art. 105) or selling or letting.

1378. The return of property for defect, by reason of its being one of the rights of the contract, one partner cannot return for defect property brought by another.

And property sold by the one cannot be returned to the other.

1379. Each of the partners can deposit the partnership property for safe keeping (ida', Art. 764), and give it to another on the condition that all the profit comes to himself (ibda', Art. 1059), and he can give it in mudarebe (Art. 1404), and he can make a contract of letting.

Rights and liabilities of one partner by contract of another.

Dismissal of agent appointed by one partner.

Return of thing for defect.

Right of partner to deal with partnership property.



As to personal work.

1389. One of the partners is not compelled to carry out personally work which he has undertaken. If he wishes, he does it himself, and, if he wishes, he gets it done by his partner, or some other person.

But if the employer has made it a condition that the work should be done by himself personally, in that case, the doing of it by himself, becomes necessary. (See Art. 571).

Division of profit.

1390. The partners divide the profit in the way that it has been agreed between them.

That is to say, if they have made a condition to divide it equally, they divide in equal shares, and if they have made a condition to divide unequally, for example, by way of one-third, and the thirds, they divide it two to one and one to the other.

Equal profit unequal work.

1391. If a condition is made that they are to be equal as regards profits and unequal as regards work, it is lawful.

*For example.*—If the partners make a stipulation that they are to do the work equally, and to divide the profit in proportion of two to one, it is lawful.

Because one in his trade can be more skilful and his work better.

Responsibility entitles to wage.

1392. The partners are entitled to their wage by their responsibility for the work.

Therefore, when one does no work, as for instance, when one is ill or one goes away, or remains idle, and one only does the work, the gain produced and the wage is divided in way agreed upon.

Liability for damages.

1393. If the property delivered to be worked upon is destroyed, or damaged, by the work of one of the partners, he becomes jointly liable with the other partner.

And the employer makes which he wishes compensate him for his property.

And this damage is divided between the partners according to their responsibility.

*For example.*—If they make a contract of partnership with a condition to accept and undertake on equal terms, the loss also is divided half to one and half to the other. And if they have made a contract of partnership to accept and undertake work by way of two-thirds to one and one-third to the other, the loss also is divided two-thirds to one, and one-third to the other.

Porters.

1394. It is lawful for porters to make a contract of partnership to accept and do work.



1395. If two persons, one of whom has a shop, and the other the tools and implements, make a contract of partnership to take work, it is lawful.

Shop owner  
and tool  
owner.

1396. If two persons make a contract of partnership to do skilled labour, on the condition that the shop is to be furnished by one and the work by the other, it is lawful. (See Art. 1346).

Shop owner  
and work-  
men.

1397. If one person has a mule and another has a camel, and they make a contract of *Shirket a'mal* (Art. 1332) upon the condition that they are to undertake on equal terms the carrying of loads, it is lawful.

Owner of  
mule and  
owner of  
camel.

And the profit made and the hire is divided between them equally. No attention must be paid to the load of the camel being greater. Because, in *Shirket a'mal* the partners becomes entitled to payment by responsibility for the work.

But when they do not make a contract of partnership to take work, if they are partners on the terms to let out the mule and camel themselves, and divide between them the hire received, the partnership is *fasid* (Art. 109), whatever is given for the hire of the mule or camel, belongs to its owner.

But if the other has assisted him in loading and unloading, he takes a payment equivalent to his work.

1398. If a person executes artificers' work together with his son, who lives in his family, the whole profit belongs to that person, his son is not counted of importance.

Son living  
with his  
father.

Likewise, when a person plants a tree and his son, who is in his family, helps him, the tree belongs to that person, his son cannot be a part-owner of it.

### SUB-SECTION III.

*Sets out some precepts relating to (Shirket vaju, Art. 1332), a partnership made to divide the profits made by buying on credit and selling. There being no partnership capital.*

1399. There is no condition that the partners shall be shareholders in equal proportions in the property bought.

Equality in  
property  
bought not  
necessary.

*For example.*—The property bought can be in equal shares between them, and it is lawful also for it to be two shares to one and one share to the other.

1400. In *Shirket vaju* (Art. 1332) the right to profit is only from the responsibility undertaken.

Right to  
profit.



Liability for  
price.

1401. The partners' responsibility for the price of the thing bought is proportional to the share which they have in the thing bought.

Division of  
profit.

1402. Whatever is the share of each of the partners in property bought, so much is his share in the profit.

And if there is a condition that more than his share in the property bought shall belong to one, it is set aside. And the profit is divided between them according to the shares in the property bought.

*For example.*—If it has been stipulated that the division of the things bought should be made equally between them, the division of the profit is also made equally between them.

And if it has been stipulated that it is to be, two-thirds to one and one-third to the other, the profit also is two-thirds to one and one-third to the other.

But in case it is stipulated that the things bought should be equally between them, and they have made a condition that the profit should be divided by way of one-third and two-thirds, no attention is paid to the condition, and the profit is divided equally between them.

Division of  
loss.

1403. In every case, damage and loss is divided according to the shares which the partners have in the thing bought. Whether they carried out the contract of purchase together, or one only carried it out.

*For example.*—When two persons who are partners in a *Shirket vujuh* (Art. 1332), have sustained loss in buying and selling, if they have made a contract of partnership with a condition that the property bought is to be equally between them, the damage and loss also is divided equally between them.

And, if they have made a contract of partnership, with condition that they are to be shareholders, one having one-third and the other two-thirds, the damage and loss also is divided as two to one.

Whether they have bought and sold the property, which caused the loss, together, or one has bought and sold for the partnership.



## CHAPTER VII.

*Is about mudarebe and contains three sections.*

3 Dastour,  
119.

## SECTION I.

*Is about the definition and divisions of mudarebe.*

1404. "Mudarebe" is a kind of partnership on the condition, that the capital is to be found by one, and the labour and work by the other.

Definitions  
mudarebe.

The owner of the capital is called "reb'l mal" and the worker "mudarib."

1405. The essence of a mudarebe is an offer and acceptance.

How formed.

*For example.*—If the owner of capital says to the person who gives the labour "Take this capital and do the work and labour in return, on the terms that the profits are to be divided between us, half and half, or, as two to one," or if he says anything else which represents the meaning of a mudarebe (Art. 1404) like "Take this money and make it capital and let the profit be in common between us in this proportion," and the mudarib accepts, a contract of mudarebe is concluded.

1406. Mudarebe (Art. 1404), is of two sorts one is unrestricted mudarebe and the other is restricted mudarebe.

1407. Unrestricted mudarebe is a mudarebe, which is not restricted in time, or place, or to one kind of trade, or by fixing the persons from whom he is to buy and to whom he is to sell.

Unlimited  
mudarebe.

If it is restricted in one of these, it is a restricted mudarebe.

Limited  
mudarebe.

*For example.*—If one says "Buy and sell at such a time, or in such a place, or such a kind of property, or, trade with such people or with the inhabitants of such a town," it is a restricted mudarebe.

## SECTION II.

*Is about the conditions of a mudarebe.*

1408. It is a condition that the owner of the property should be competent to appoint an agent, and that the mudarib should be competent to be his agent.

Competency  
of partner.

1409. It is a condition that the capital be property capable of being the capital of a partnership. (Sec S. 3, of Chapter VI).

The capital.

Therefore, what will be received and is owing from people, and merchandise, and immovable property, cannot be the capital of a mudarebe.

But if the capitalist has given a thing which is merchandise ('aruz, Art. 131), and said "Sell this and work on mudarebe terms with the price," and the mudarib accepts and takes it, and



sells that property, and makes capital of the money which is the price, and trades, it is a good mudarebe.

Likewise, if he says, "Take so many piastres which I am owed by such a one, and employ it on mudarebe terms," and he accepts, it is good.

Capital must be delivered.

1410. It is a condition that the capital be delivered to the mudarib.

Must be known.

1411. As in Shirket-i-aqd (Art. 1329), so also in mudarebe, it is a condition that the capital be known, and that the share of the contracting parties of the profit be a part, like a half or a third, and be fixed.

But if the partnership is fixed in general terms, e.g., if they say "Let the profit be in common between us," it is construed to be "in equal shares." The profit is divided in equal shares between the owner of the capital and the mudarib.

If one condition wanting, fasid.

1412. When one of the above-named conditions is not, found, e.g., if they have not fixed the shares of the contracting parties so as to be proportional shares, but it has been fixed that there should be given to one of them, from the profit, so many piasters, the mudarebe (Art. 1404), is fasid (Art. 109).

### SETCION III.

#### *As to the consequences of mudarebe.*

The mudarib, rights and liabilities of.

1413. The mudarib is a person entrusted (emin). The capital in his hands is like property deposited for safe keeping (vedi'a, Art. 763). And as regards his disposing of the capital, he is the agent (vekyl) of the owner of the capital. And if he makes a profit he is a partner in it.

Mudarib, authority of.

1414. In a mudarebe (Art. 1404), without restrictions, by the contract of mudarebe alone, the mudarib (Art. 1404), is authorised to do all necessary things arising out of the mudarebe.

Thus, first, he can sell and buy property to make gain. But if he buys property at an excessive loss (ghabn fahish, Art. 165), he has bought the property for himself. It cannot come into the account of the mudarebe (Art. 1404).

Secondly, he can sell property either for ready money, or credit, or, for a great or small price. But as far as there is use and custom in trade he can give delay for payment. On the other hand he cannot give a long delay not according to the custom of the trade.

Thirdly, he can accept a hawale of the price of thing sold.



Fourthly, he can make another person his agent to sell and buy.

Fifthly, he can deposit the property of the partnership for safe keeping and make it a bida'a (Art. 1059), and pledge and take as a pledge, and let and hire it.

Sixthly, he can go to another city for trade.

1415. In mudarebe without restriction, the mudarib is not authorised, by the contract of mudarebe alone, to mix the partnership property with his own property, or to give it out on a mudarebe contract.

But if there is a custom in the town for mudaribe (Art. 1404), to mix the partnership property with their own property, in mudarebe without restrictions, the mudarib is entitled to do so.

1416. If, in a mudarebe without restriction, the owner of the property says to the mudarib "Do as you think right," and has made him free to act according to his opinion, the mudarib (Art. 1404), in every case can mix the partnership property with his own property, and can give it on mudarebe terms.

But in this case also he is not permitted to make a gift or loan from the mudarebe property, or to enter into debt in excess of the capital, his doing of these is subject to his having clear authority from the owner of the capital.

1417. If the mudarib (Art. 1404), has mixed the partnership property with his own property, the profit resulting is divided according to the amount of the capitals.

That is to say, he takes himself the benefit from his own capital, and the benefit from the partnership property is divided, in the way which was agreed with the owner of the capital between them.

1418. Property bought on credit, which is in excess of the partnership capital with the consent of the owner of the capital, becomes common property between the two of them in Shirket vujuh (Art. 1332).

1419. If the mudarib goes to a place, other than the town where he is, on the business of the partnership, he takes his expenses as far as they are proper, from the partnership property.

1420. In a mudarebe limited by restrictions, whatever may be the restriction and condition made by the owner of the capital, the mudarib (Art. 1404), must respect it.

As to the mudarib mixing his own property with that of partnership.

Division of profit from mixed property.

Property bought in excess of capital.

Travelling expenses.

Mudareb must respect restrictions.



Effect of  
exceeding  
powers.

1421. If the mudarib goes beyond what he is permitted, or acts contrary to the conditions, he becomes a wrongdoer (ghasib, Art. 881). And in case he has done so, the profit and loss from the trading falls on himself. And if property of the partnership is lost, he is responsible.

Disregard of  
express  
direction.

1422. If the owner of the capital says "Do not go to such a place with the partnership property" or "Do not sell property on credit," and after the mudarib (Art. 1404), has been forbidden, he acts contrary to it, and goes to that place with the partnership property, if the partnership property is destroyed, or if he has sold the property on credit, and the money of the partnership is lost, he is responsible.

Fixed time  
for expira-  
tion.

1423. When the owner of the capital has limited the time of the mudarebe by a fixed time, when that time is passed, the mudarebe is dissolved.

Dismissal of  
mudarib.

1424. When the owner of the capital dismisses his mudarib (Art. 1404), it is necessary that he should make known his dismissal to him.

The dispositions of the property made by the mudarib (Art. 1404), up to the time when he has been informed of his dismissal, are held good. And after he has been informed of his dismissal, he cannot dispose of the money which is in his hands. But if there is property other than money in his hands, he can sell it and change it into money.

Right of  
mudarib to  
profit.

1425. The mudarib (Art. 1404), is only entitled to profit as the equivalent for his work. And the work is able to give the right by the contract alone. Therefore, in a contract of mudarebe, whatever amount has been stipulated for the mudarib, he takes a share of the profit in accordance with it.

Right of  
capitalist to  
profit.

1426. The right to profit of the owner of the capital is from his property. Therefore, in a mudarebe which is fasid (Art. 109), the whole of the profit belongs to him, and the mudarib, is in the position of a person hired by him, and receives an equivalent wage. But he cannot exceed the amount agreed upon at the time of the contract. And if there is no profit, he has no right also to the equivalent hire.

Loss of  
mudarebe  
property.

1427. If a quantity of the mudarebe property is lost, in the first place it is taken in account from the profit, it is not set against the capital.

And if it exceeds the amount of the profit and is set against the capital, the mudarib is not responsible for it. Whether the mudarebe be good or fasid (Art. 109).



1428. In every case of damage or loss of value, it falls on the owner of the capital. And if a condition has been made with *mudarib* (Art. 1404) that it is to be shared jointly between them, no attention is paid to that condition.

Damage or loss of value.

1429. If the owner of the capital, or the *mudarib* (Art. 1404), dies, or becomes continuously made the *mudarebe* is dissolved.

Death or madness of either party.  
Claim on estate of *mudarib*.

1430. If the *mudarib* dies without making known what he has done with the capital, it becomes necessary to make compensation from his estate. See Arts. 801 and 1355.

## CHAPTER VIII.

*Is divided into two sections and explains muzara'a and musaqat.*

3, Destour, 123.

### SECTION I.

*Is about muzara'a.*

1431. *Muzara'a* is a kind of partnership, where the land comes from one, and the work from the other, *i.e.*, a partnership to cultivate, and divide the crops.

Definition *muzara'a*.

1432. The essence of *muzara'a* is the proposal and acceptance.

Essence of.

Thus, if the owner of the land, says to the worker, *i.e.*, to the cultivator, "I have given you this land by way of *muzara'a* on the terms that you take such a share of the crops," and the cultivator says "I have accepted" or "I have taken the land" or if he says something evidencing his assent, or the cultivator says to the owner of land "I will work by way of *muzara'a* in your land," and he assents, the *muzara'a* is a concluded contract.

1433. In *muzara'a* it is a condition that the two contracting parties be of sound mind. There is no condition that they be of age. Therefore, an infant who has permission (Art. 942), can make a contract of *muzara'a*.

Competency of parties.

1434. It is a condition that the sowing, that is to say, what is to be sown, should be fixed, or that it be made general that the cultivator shall sow what he likes.

Stipulation as to crop necessary.

1435. It is a condition that the share which the cultivator is to take from the crops be fixed when the contract is made, and that it be a proportional part, like a half, or a third. And if his share is not fixed, or it is fixed that something other than produce is to be given, or it is determined by saying that it is to be so many keys, the *muzara'a* is not good.

As to division of produce.



- As to the land. 1436. It is a condition that the land be fit for cultivation, and that it be given up to the cultivator.
- Non-observance of above conditions. 1437. If one of the above-mentioned conditions is not found, the muzara'a is fasid (Art. 109).
- Division of produce. 1438. In a valid muzara'a, whatever condition the contracting parties have made, they divide the produce between them according to it.
- When muzara'a fasid. 1439. In a muzara'a which is fasid (Art. 109), the produce belongs entirely to the owner of the seed.  
If the other is the owner of the land, he takes the rent of the land, and, if he is the cultivator he takes a fair wage.
- Death of owner or land while crop green. 1440. If the owner of the land dies while the crops sown are green, the cultivator continues his work until the crops are ripe. The heirs of the dead man cannot prevent him.
- Death of cultivator. And if the cultivator dies, his heir stands in his place, if he wishes, he continues the work of cultivation until the crops are ripe. The owner of the land cannot prevent it.

## SECTION II.

### *Is about musaqat.*

- Definition musaqat. 1441. "Musaqat" is a kind of partnership on the terms that trees are to be found by one, and cultivation by the other, and that the fruit produced is to be shared between them.
- Essence of. 1442. The essence of musaqat is a proposal and acceptance. Therefore, if an owner of trees says "I have given you these trees by way of 'musaqat', on the condition that you have such a share of the fruit", and the workman, *i.e.*, the person who is to cultivate those trees accepts, the musaqat is a concluded contract.
- Competency of parties. 1443. It is a condition that the contracting parties be of sound mind. There is no condition that they be of age.
- Condition that shares be known. 1444. In musaqat as is muzara'a it is a condition that the shares of the contracting parties be a proportional part like a half, or a third, and that they be fixed.
- That trees be delivered. 1445. It is a condition that the trees be handed over to the workman.
- Division of profits. 1446. In a valid musaqat the contracting parties divide the fruit between them in the way they have agreed upon.



1447. In a musaqat which is fasid (Art. 109), the fruit produced belongs entirely to the owner of the trees. The workman takes a fair wage.

In fasid musaqat.

1448. If the owner of the trees dies while the fruit is unripe, the workman continues to do his work until the fruit is ripe. The heirs of the dead man cannot prevent him. And if the workman dies, his heirs stand in his place, if they wish, they continue to his work. The owner of the trees cannot prevent them.

Death of owner of trees.

Death of workman.

Date of Imperial Irade,  
13th Jemazi-evvel, 1291.

## BOOK XI.

*Is about vekyalet. It contains three Chapters and a preface.*

### THE PREFACE.

*Explains certain technical terms of the Sacred Law.*

1449. "Vekyalet" is for someone to put business of his on another, and to make him stand in his own place in respect of that business.

Vekyalet.

The person who appoints the other is called "muvekkil," and the person who stands in his place "vekyl," and that business is called "muvekkil bih."

Muvekkil.

Vekyl.

1450. "Risalet" is for one person to communicate to another the word of third person, without entering into the disposition of property.

Risalet.

The person who makes the communication is called "resul," the person who sends the message is called "mursel," and the persons to whom the message is brought "mursel ileyh."

Resul.

Mursel ileyh.

### CHAPTER I.

*Is about the essence of a vekyalet and the divisions of it.*

1451. The essence of the appointment of a vekyl is the proposal and acceptance.

Essence of contract.

Therefore, if the person who appoints says "I make you vekyl in this matter" and the vekyl says, "I have accepted," or if he says something else indicative of assent, the vekylat is a concluded contract.

Likewise, if the vekyl does not say anything, and takes in hand the doing of that matter, by reason of his having impliedly accepted the agency, his acts are good.

But if after the proposal the vekyl has refused it, the proposal does not remain valid.



Therefore, when the person who appoints the vekyl says "I have made you vekyl for this matter" after the person who is to be vekyl has refused, saying "I have not accepted" if he sets about doing the business of the person who offered the appointment, his disposition of the property is not lawful.

- Permission.** 1452. Leave and permission are an appointment as vekyl.  
**Ratification.** 1453. A present assent is like a previous appointment as vekyl.

Therefore, after someone, who has no authority, has sold the property of another, and he tells the owner of the property, and the owner sanctions it, it is as if he had been vekyl to him before.

Risalat and vekyalet are different.

1454. The sending of a messenger (risalet, Art. 1450), is not of the same category as an appointment of an agent (vekyalet, Art. 1449).

Therefore, when a banker is going to lend money, to someone, and that person sends his servants to fetch the money, the servants are that man's messengers, there is not a vekyalet (Art. 1149), to borrow money.

Also, when the person, who has been sent by someone to a horse-dealer to buy a horse, says to that horse-dealer "such a person wishes to buy such a horse from you. "And upon this the horse-dealer says "Go and tell him I have sold him this horse on the condition that it is so many piastres, and deliver the horse to him."

And he gives the horse to that person. When he has delivered him in the way aforesaid, to the person who sent him, and he has immediately accepted, there is a contract concluded between the horse-dealer and the person who sent the other. The other is only a messenger and intermediary, between them. But he is not a vekyl.

Again, if someone says to a butcher "give so many oke of meat every day for me to such a servant of mine who does my marketing, and the butcher gives in that way, that servant is the messenger of his master, he is not called a vekyl.

1455. An order is sometimes an appointment of a vekyl (Art. 1449) and sometimes the sending of a message (risalet, Art. 1450).

*For example.*—When a person's servant by his order has bought property from a merchant, he becomes that person's vekyl to buy.

But when that person has bargained with a merchant, and buys property, and sends his servant to bring it, he is his master's messenger and is not his vekyl. (As to orders see Arts. 1506-1515).



1456. The appointment of a vekyl (Art. 1449), is sometimes without restriction, i.e., it is not dependent on a condition, or made dependent on a time, or limited by any limitation.

And sometimes it is dependent on a condition.

*For example.*—If one says, "I have made you my vekyl (Art. 1449), to sell this horse of mine, if such a merchant comes here", and that person accepts, the appointment as vekyl is made subject to the coming of that merchant. And if that merchant comes, the vekyl can sell the property, and otherwise he cannot sell it.

And sometimes the appointment is made dependent on a time.

*For example.*—When one says "I have made you vekyl to sell my animals in the month of April", and that person accepts, when the month of April comes, he becomes agent, and can sell those animals as vekyl during that month, or after it. He cannot sell before April.

And sometimes the appointment is limited by a limitation.

*For example.*—If one says "I have appointed you vekyl to sell this watch of mine for 1,000 piastres", the appointment of the vekyl is subject to the limitation, that he is not to sell for less than 1,000 piastres.

## CHAPTER II.

*Is about the conditions of vekyalet (Art. 1449).*

1457. It is a condition that the person, who appoints the vekyl, be competent to do the work for which the vekyl is appointed.

Competency  
of principal.

Therefore, the appointment of a vekyl by a madman and by an infant without understanding (Art. 943), is not good.

And an infant who has understanding, even if his guardian gives permission, cannot appoint another vekyl for matters which are pure loss as regards himself, like a gift or giving alms, but he can appoint another vekyl for matters, which are purely beneficial to him, like the acceptance of a gift or alms, even if he has not the permission of his guardian.

But if he is freed from restraint (me'zun, Art. 942) for trading, he can appoint another vekyl in matters which may be beneficial or the cause of loss, like selling and buying.

If he is not, the appointment of the vekyl is a concluded contract subject to the permission of the guardian of the infant.

1458. It is a condition that the vekyl have reason and understanding (mumeyyiz, Art. 943). It is not a condition that he should have arrived at the age of puberty.

Competency  
of agent.



Matters in respect of which vekyl may be appointed.

Therefore, an infant who has understanding (Art. 943), if he is released from restraint (mc'zun, Art. 942), can be a vekyl. But the rights under the contract do not affect him, they concern the person who appoints him vekyl.

1459. A person can appoint another vekyl for the doing and discharging of every duty, relating to transactions (mu'amelat), and for matters which he would be able to do personally.

Therefore, it is lawful, if a person appoints another his vekyl for selling or buying, letting or hiring, giving or taking a pledge for depositing or receiving a thing for safe keeping, for making or receiving a gift, and for making a compromise, and for giving an acquittance and for making an admission, and for bringing an action, and for claiming a right of pre-emption, and for partition, and for paying and receiving a debt, and for the receipt of a thing.

But it is necessary that the thing, for which he is appointed, should be known.

### CHAPTER III.

*Is about the consequences of vekyalet (Art. 1449), and contains six sections.*

#### SECTION I.

*Is about the general rights under a vekyalet.*

Contracts made by agent.

1460. It is necessary that the contract of the vekyl should be incumbent on the principal, in gift, in loan (i'are, Art. 766), on a deposit, on lending money, on entering into a partnership, and in mudarebe (Art. 1404), and in compromising a matter denied by the other side. If it is not made incumbent on the principal, it is not good.

Contracts made by agent.

1461. In selling, and buying, and hiring, and a compromise on the admission of the defendant, there is no condition that the contract of the agent should be incumbent on the principal. When he does not make it incumbent on the principal, if he contents himself with making it incumbent on himself, it is also good. And in both cases the ownership remains with his principal.

But if the contract is not made incumbent on the principal, the rights under the contract concern the contracting party, i.e., the vekyl. And if it is made incumbent on the principal, the rights under the contract concern the principal. And in this case the vekyl is like a messenger.

*For example.*—When a vekyl for sale has sold property of his principal, and has not made the contract incumbent on him, and



has contented himself with making it incumbent on himself, he is compelled to deliver the thing sold to the purchaser, and can demand and receive from the buyer the price. And if someone turns up who has a right to the property, and it is taken after a judgment, the purchaser has recourse to the vekyl for sale, *i.e.*, he takes from him the price which he has given.

And a vekyl to buy, receives property, which he has bought in this way without making a contract incumbent on the principal, and is compelled to pay to the seller from his own property the price of the property bought, even if he does not receive it from his principal.

And if there appears an ancient defect in the property bought, the right to sue about its return belongs to the vekyl.

But if the vekyl has made the contract incumbent on his principal, *e.g.*, if he has made a contract of sale, saying, "On account of such a one as vekyl I have sold" or, "I have bought for such a one," in that case, all the rights in the contract above mentioned concern the principal. And in this case the vekyl is like a messenger.

1462. When a messenger (Art. 1450), is sent, the rights under the contract affect the person who sends him. They do not attach to the messenger at all.

Messenger  
not affected  
by contract.

1463. Property received, under his appointment as vekyl, by a person, who is vekyl to sell or buy, or to pay or receive a debt, or to receive an existing specific thing is like a thing deposited for safe keeping. If it is destroyed without fault and there is no neglect, no compensation is necessary.

Liability of  
vekyl and  
resoul for  
safe keeping  
of property.

Property in the hands of a messenger for the performance of his message is also like a thing so deposited.

1464. When a debtor sends his creditor, if it is lost in the hands of the messenger before it is received, if the messenger is the messenger of the debtor, it is lost from the property of the debtor, and if the messenger is the messenger of the creditor, it is lost from the property of the creditor and the debtor is free from the debt.

Loss of  
money by  
messenger to  
pay debt.

1465. If someone appoints two persons to be vekyl together, one of them alone cannot act in the matter for which they are appointed vekyl, *i.e.*, he cannot perform the vekyalet.

When one  
may act  
where two  
vekyls  
appointed.

But if they are appointed vekyl for litigation, or for returning a thing entrusted for safe keeping, or for paying a debt, one alone can carry out the vekyalet.

And after a person has appointed someone vekyl for a matter, in case he has appointed another person vekyl specially for that



Vekyl can-  
not delegate  
his authori-  
ty-

work, whichever of them carries out the vekyalet, it is lawful.

1466. In a matter in which a person has been appointed vekyl, he cannot appoint another person vekyl.

Yet, if the principal has given permission, or has said to him "Do the work as you think fit," in that case the vekyl can appoint another person vekyl.

And the person, who has been appointed vekyl by the vekyl in this way, becomes the vekyl of the principal, and he is not the vekyl of the first vekyl. So much so, that by the death or dismissal of the first vekyl, the second vekyl is not discharged.

Payment of  
vekyl.

1467. When there is a condition for payment in a vekyalet, if the vekyl performs his vekyalet he becomes entitled to his pay. And if there is no condition, and the vekyl is not of the class of people, who serve for hire, his service is free, he cannot demand pay.

## SECTION II.

*Is about a vekyalet for buying.*

The thing to  
be bought.

1468. According to the last paragraph of Art. 1459, it is necessary that the subject matter of the vekyalet should be known to an extent, that the performance of the vekyalet will be possible. So that the principal must declare the genus of the thing to be bought. And if under the genus there are different sorts, the declaring of the genus is not sufficient, its kind or its price must also be declared. And if he does not declare the genus of the thing to be bought, or if he declares the genus alone, when there are different sorts under the genus, and does not fix the kind or price, the vekyalet is not good, unless it be the appointing of a vekyl by a general vekyalet.

*For example.*—If someone appoints a vekyl, saying "Buy a horse for me," the vekyalet is good.

And, when someone is going to appoint a vekyl to buy cloth to make clothes, it is necessary for him to declare the price, by saying so many piastres for the lot, or to declare the kind saying Syrian or Indian cloth, as well as to declare the genus, that is to say, whether he wants striped cloth or other cloth.

When he does not describe the genus, if he says only, "Buy me a saddle animal", or "Buy me cloth", or, for example, "Buy me a striped cloth," and does not declare the kind or price, the vekyalet is not good.



But if he says "Buy me cloth for a suit of clothes, or striped cloth, it is left to your discretion of what genus and kind it shall be," it is a general vekyalet, the vekyl can buy of what genus and kind he wishes.

1469. With a difference of substance, or object, or manufacture, the genus also is different.

*For example.* Cloth made of flax and cloth made of cotton are different in genus by reason of their being of different substance, and the wool and the skin of a sheep are of different genus because of their different objects. Because there are special uses for them the object is to make bags from skins, and the object in buying wool is to make thread to weave a carpet. And the Shar-i-kyuy felt and the Oushak felt being all made of wool, by reason of their being different in manufacture, are different in genus.

1470. If a vekyl acts contrary to instructions in regard to genus, *i.e.*, when the principal says "Buy a thing of such a genus, if the vekyl buys a thing of another genus, however, much the thing bought may be more useful, as regards the principal, it is not nafiz (Art. 113), that is to say, the thing bought by the vekyl remains for his own account, it has not been bought for the principal.

1471. When the principal says "Buy a ram" if the vekyl buys a ewe, it is not nafiz (Art. 113) as regards the principal, and the sheep bought belongs to the vekyl.

1472. When the principal says "Buy such a building site for me," and afterwards someone builds on that site, the vekyl cannot buy it under his vekyalet. But if he says "Buy such a house," if that house is plastered or another wall is added, the vekyl can buy it under his vekyalet.

1473. If the principal says "Buy milk" and does not say what sort of milk it is to be, it is understood to be the milk which is customarily used in the town.

1474. If the principal says "Buy rice," the person who is vekyl can buy any kind of rice sold in the market.

1475. When a person is going to appoint another to buy a house, he must declare its quarter and price, if he does not declare it, the vekyalet is not good.

1476. When someone is going to appoint another vekyl to buy a single pearl, or a ruby, he must declare up to how many piastres its price is to be. If he does not do so, the vekaylet is not good.

Difference in genus what is.

Vekyl buying thing of different genus to that ordered.

Authority to buy a ram.

Authority to buy a site, or a house and subsequent change.

Order to buy milk.

Order to buy rice.

Order to buy a house.

Order to buy a precious stone.



Order to buy things weighed or measured.

1477. In things whose quantity is ascertained by the keyl, or by weight, or by counting or by the zira, (Art. 132), there must be declared the quantity which the vekyl is appointed to buy, or the amount to be paid.

*For example.*—When someone has appointed a person vekyl to buy wheat, it is necessary that he should say how many keyls he shall buy, or that he declares the price of the quantity, saying, so many piastres' worth of wheat. If he does not declare this, the vekyalet is not good.

As to the quality of the thing to be bought.

1478. It is not necessary to enumerate the qualities of that which the vekyl is appointed to buy.

*For example.*—It is not necessary to enumerate its qualities saying, the best, middle, or lowest, provided that it is necessary that the qualities of the thing, which the agent is appointed to buy, must be in accordance with the condition of the principal.

*For example.*—When a person, who lets horses, has appointed someone his vekyl to buy a horse, he cannot buy an Arab horse for 20,000 piastres. If he does, the buying of it is not nafiz (Art. 113) as regards the principal, i.e., that horse is not bought for the principal, and remains for the account of the vekyl.

Vekyl must not buy contrary to limitation of authority.

1479. When a vekyalet is limited by a limitation, the vekyl must not go contrary to it. If he does the purchase is not nafiz (Art. 113) as regards the principal, and the property bought remains on his own account.

But if he goes contrary to in a manner which is more beneficial as regards the principal, it is not counted as if he had gone contrary to it.

*For example.*—When someone has said "Buy such a house for me for 10,000 piastres" if the vekyl buys it for a larger sum, it is not nafiz (Art. 113) as regards the principal, that house remains for the account of vekyl. But if it is lower than 10,000 piastres, it is bought for the principal.

Likewise, when he says, "Buy on credit", and the vekyl buys for ready money, that property remains for the account of the vekyl. But if he says "Buy for ready money," and the vekyl buys for a deferred payment, it is bought for the principal.

Agent buying half what he was ordered to buy.

1480. When a person has bought half a thing, the whole of which he was appointed vekyl to buy, if there is damage in dividing that thing, the purchase of it is not nafiz (Art. 113) as regards the principal. If there is no damage, it is nafiz (Art. 113).

*For example.*—When he says, "Buy a piece of cloth," if the vekyl buys half the piece, it is not nafiz (Art. 113) as regards the



principal, that property remains for the account of the vekyl.

But, if he says, "Buy six keyls of Wheat", and the vekyl buys three keyls, it is bought on account of the principal.

1481. If the principal says "Buy me cloth for a cloak," and a cloak cannot be made from the cloth bought by the vekyl, the buying is not nafiz (Art. 113) as regards the principal, and that cloth remains for the account of the vekyl.

Agent buying insufficient for the object mentioned.

1482. A person being vekyl to buy a thing, without the price being mentioned, can buy that thing for its equivalent value, or at small loss.

Where Price not fixed.

But as regards things like bread and meat which have a fixed value and a current market price, a small loss also is not pardoned.

But if he buys at an excessive loss, in every case the purchase is not nafiz (Art. 113) as regards the principal; that property remains to his own account.

1483. "Purchase," without qualification, means "purchase for money." In this case, if a person who is vekyl to buy a thing, take it by barter for other property, it is not nafiz (Art. 113) as regards the principal, and that thing remains for the account of the vekyl.

To buy means buy for money.

1484. If someone appoints another vekyl to buy something which he requires for a fixed season of the year, it is considered to be for that season.

Vekyl for a fixed time.

*For example.*—If someone appoint a man his vekyl to buy a goat hair cloak in the spring season, he becomes his vekyl to buy a cloak for that summer, if he buys after the season has passed, or in the spring of next year, it is not nafiz (Art. 113) on account of the principal, and the cloak bought by the vekyl remains on his own account.

1485. A person, who is vekyl to buy a fixed thing, cannot buy that thing for himself. And if, when he buys it, he says, "I buy this thing for myself," it is not bought for himself, and becomes the property of the principal.

Agent to buy a defined thing cannot buy it for himself.

Except in the case, where a price has been fixed, and he buys at a price higher than that fixed by the principal, or when the price has not been fixed, and he buys with an excessive loss, then that thing becomes the vekyl's.

Except at a price above that fixed.

And again, in case the principal is present, and the vekyl says, "I have bought this for myself", that thing becomes the vekyl's.



Person buying without express acceptance of authority.

1486. When someone says "Buy such a one's horse for me," and the vekyl, without saying anything "Yes" or "No" goes and buys the horse.

If, while he buys it, he says, "I have bought for the principal," it becomes the property of the principal. And if he says "I have bought on my own account," it becomes his own.

But if he says only "I have bought, without saying on whose account he has bought, in case after that he has said "I have bought for the principal," if he has spoken when the horse is not destroyed, and there is no new defect, it is confirmed.

And, if he has spoken, after the horse is destroyed, or after a new defect has appeared, it is not confirmed.

Vekyl for different principal.

1487. When two persons separately appoint someone vekyl to buy a thing, for whichever that person meant to buy at the time when he bought it, belongs to him.

Cannot sell his own property to principal.

1488. If an agent to buy, sells his own property to the principal, it is not good.

When agent can return for defect.

1489. If the vekyl becomes aware of a defect in the thing bought before he has delivered it to the principal, he can return it of his own accord.

But, after he has delivered it to the principal, he cannot return it without his order, and being appointed vekyl.

Vekyl buying on credit cannot demand cash from principal.

1490. When the vekyl has bought a thing for a deferred payment, as regards the principal it is deferred also, and the vekyl cannot demand its price in cash.

Secus of delay given after purchase.

But after the vekyl has bought for a cash price, if the seller gives him a delay for payment, the vekyl can demand from the principal the price in ready money.

Vekyl paying from his own property can recover price from principal.

1491. If, when a vekyl to buy has paid the price out of his own property, he has received the thing sold, he can have recourse to the principal, i.e., he can take from him the price he has paid.

Lien for price, when he has not paid.

And, even if he has not paid the seller the price of the thing bought, he can claim the price from the principal, and hold and keep the property until the principal has paid it.

Thing purchased lost or damaged in hands of agent.

1492. When property bought is by accident destroyed, or lost, in the hands of a vekyl to buy, it is lost from the property of the principal and nothing is lost from the price.



But when the vekyl is holding it for payment of the price, if, in that case, it is lost or destroyed, the vekyl, must pay the price.  
 1493. The vekyl to buy cannot rescind the contract of sale except so far as he has the permission of the principal.

Agent to buy cannot rescind sale without leave.

### SECTION III.

#### *Is concerning a vekyalet for sale.*

1494. A vekyl for sale, without restriction, can sell the property of his principal for a small or large price, i.e., for the price which he has seen fit.

Can sell for what price he sees fit.

1495. If the principal has fixed the price, i.e., if he has said "Sell for so many piastres," the vekyl cannot sell for less than that. If he does sell, the sale is a concluded contract, subject to the approval of his principal.

Unless principal has fixed price.

And when he sells of his own accord for a less sum than that, and has delivered the property to the buyer, the principal can make him compensate him for that thing.

1496. If the vekyl for sale has bought the property of his principal for himself, it is not good.

Agent to sell cannot buy.

1497. A vekyl for sale cannot sell the property of his principal to persons, who are not allowed by law to give evidence on his behalf. But, if he sell for more than its value, the sale is good.

Sale by agent to persons incompetent as witnesses for him.

And again if he is made vekyl by a general vekyalet, the principal saying "Sell to anyone you wish," in that case, a sale by the vekyl to them for an equivalent price is permitted. (See Arts. 1700, 1701).

1498. A person who is vekyl for sale without restriction, can sell the property of his principal for a cash payment, or for credit, with such time for payment as is customary amongst merchants, in respect of that property, but he cannot sell with a long delay, contrary to use and custom.

As to sales for cash or on credit.

And if expressly, or impliedly, he is vekyl to sell for cash, he cannot sell on credit.

*For example.*—If the principal say "Sell this thing for cash" or "When you have sold this thing, pay my debt," the vekyl cannot sell it on credit.

1499. When there is damage in the division of a thing, the vekyl cannot sell half of it. If not, he can.

As to selling part of thing.

1500. A vekyl can take a pledge, or surety, for the price of property sold on credit. But if the pledge is destroyed or the surety becomes bankrupt, the vekyl is not responsible.

As to taking security for price.



Order to take security for price.

Not responsible if buyer does not pay.

Receipt of price by principal good.

Price, recovery of.

Rescission of sale by vekyl for sale.

Person paying debt by order has recourse against principal.

Can only recover what he is ordered to pay.

1501. When the principal has said "Sell with a pledge or a surety", the vekyl cannot sell without a pledge and without a surety.

1502. If the vekyl for sale has not received from the purchaser the price of the property sold, he is not compelled to pay the principal from his own property.

1503. If the vekyl has the right to receive the price of the thing sold, if the principal receives it, it is also good.

1504. If the vekyl is without wages, he is not compelled to pay, or collect the price of the thing sold. But, in case he has not collected it of his own accord, he must make his principal his vekyl to receive and collect the price.

But a person, who is a vekyl for sale for wage, like an auctioneer, and a broker, is compelled to pay and collect the price of the thing sold.

1505. A vekyl for sale can of his own accord rescind a sale, but this rescission is not nafiz (Art. 113) as regards the principal. The vekyl must pay the principal the price.

#### SECTION IV.

##### *Is explanatory of precepts about an order.*

1506. If a person orders another person to pay his debt, which he owes to a private person, or to the State, and that person pays it from his own property, afterwards he can have recourse to the person who gave the order, whether the person, who gave the order, gave a right of recourse or not. That is to say, whether he said only "Pay my debt," or made a condition, giving the person, who received the order, the right of recourse against himself by expression, such as, "Pay my debt on the condition that you afterwards receive it from me," or "If you pay my debt, I will afterwards pay you."

1507. A person who receives orders to pay a debt with base coin out of his property, and pays pure coin, recovers base coin from the person who gave the order.

And a person who receives orders to pay with pure coin, if he pays the debt with base coin, he receives base coin from the person who gave the order.

But if a person who has been ordered to pay a debt, sells his own property to the creditor and sets it off against the debt of the person who gave him the order, whatever the amount of the debt may be, he recovers it from the person, who gave the order.



And if he has sold his property to the creditor for an amount greater than its value, the debtor who gave the order cannot deduct from his debt that excess.

1508. When someone has ordered another to incur expenditure for himself or his wife and family, even if he does not make a condition that there shall be recourse to him, saying "I will afterwards pay what you spend," that person recovers the expenditure, so far as it is reasonable, from the person who gave the order.

Likewise, when a person gives an order, saying, "Repair my house," in case the person ordered has done the repairs, even if there has been made no condition for recourse, he recovers from the person, who gave the order, what he has spent, up to a reasonable sum.

1509. If someone give an order to another, saying "Give money as a loan to such a one, or as a present, or as alms, afterwards I will pay you," and the other gives it, afterwards he has recourse against the person who gave the order.

But in case he has only said, "Pay" without making a condition for recourse by such words as, "I will pay you" or "Afterwards take it from me," the person who receives the order has no recourse against him.

Except if there is a custom or use to have recourse against the person, who gave the order, in matters of this sort, in any way, as when the person who receives the order is a member of the family of the person who gives the order, or his partner, the person who receives the order, can have recourse also, when no condition for recourse has been made. See Art. 36.

1510. The order of a person is lawful in respect of his own property only.

Therefore, if someone says to another, "Throw this property into the sea," and the person who receives the order, throws it, knowing that the property belongs to someone else, the owner can enforce compensation for that property from the person who threw it. Nothing is necessary for the person who gave the order, so far as he has not used force (jebr).

1511. If someone say "Pay from your own property my debt of so many piastres" giving an order to another person, and, after that person has promised, he refuses to pay, that person is not compelled to pay the debt, by reason only of his having made the promise.

Person, incurring expense by order, can recover it.

When person lending or giving by order can recover the amount.

Order no justification for act known to be wrongful.

Promise by person, ordered to pay debt, to pay himself, not binding.



Order to pay from money, owing to person who gives the order, is binding.

Order to sell and pay from price.

Money handed to someone with order to pay one creditor cannot be taken by others.

On death of person before money paid it reverts to his estate.

Paying without a receipt, contrary to order.

Appointment of agent to litigate.

Admission of agent for litigation.

1512. When the person who gives the order has money to receive from the person to whom he gives the order, or when there is money of his deposited with him for safe custody, if he makes an order to pay his debt from it, the person ordered is compelled to pay the debt.

But in case the person who gives the order has said "Sell such a property of mine and pay my debt," the person who receives the order, if he is a vekyl without pay, cannot be compelled.

And if he is a paid vekyl, he is compelled to sell that property and pay the debt of the person who gives the order.

1513. If someone say "Pay such a creditor of mine," and has given a quantity of money to the other person, the other creditors of the person, who gave the order, have no right to take a share from it, and the person, who receives the order, gives the money to the creditor, to whom he was ordered to give it, alone.

1514. When a person has given a quantity of money to another person to pay his debt, and before the person who receives the order has paid, or sent that money to the creditor, or caused it to reach him, if the death of the person who gave the order be known, that money reverts to the estate of the person who gave the order, and the creditor must make an application against the estate.

1515. If someone gives to another a quantity of money to pay his creditor and prohibits him, saying, "Do not deliver the money until you have received a receipt" or "until it has been endorsed on the bond which the creditor has," and the person who receives the order, pays the money to the creditor without having an endorsement made and without taking a receipt, if afterwards the creditor does not admit it, and there is no evidence of the receipt, and he takes that money again from the person who gave the order, the person who gave the order can make the person who received the order compensate him for it.

## SECTION V.

*Is about litigation, i.e., about a vekyalet for litigation.*

1516. Both the plaintiff and defendant can appoint whom they wish as vekyl for litigation. The consent of the other is not a condition.

1517. The admission of a person, who is vekyl for litigation, made against his principal, if made before the judge, is held good,



if not made before the judge, it is not held good, and he is dismissed from his vekyalet.

1518. When a person appoints another his vekyl for litigation, it is lawful if he makes an exception as to an admission against himself.

In this case the admission of the vekyl against the principal is not good. (See last paragraph of Art. 1456).

And so, in case he makes an admission before a judge, when he has no permission to do so, he is dismissed from his vekyalet.

1519. A vekyalet for litigation does not cause a vekyalet to receive.

Therefore, if a vekyl for a lawsuit is not also a vekyl to receive, there is no right to the receipt by the vekyl of the property, about which the judgment was given.

1520. A vekyalet to receive does not cause a vekyalet to litigate.

N. B.—An agent for litigation is not an agent to settle (Art. 1542).

Appointment without power to admit.

Agent for litigation is not agent to receive.

Agent to receive is not agent to sue.

Agent to sue is not agent to settle.

## SECTION VI.

### *Sets out precepts about the dismissal of a vekyl.*

1521. The principal can dismiss his vekyl from his vekyalet.

But he cannot dismiss him, if the right of another is depending.

So, when a debtor has pledged his property and at the time of making the contract of pledge or afterwards, he has appointed someone vekyl to sell the pledge when the time for payment of the debt is come, without the consent of the pledgee, the pledgor cannot dismiss the vekyl.

Principal can dismiss agent unless rights of others intervene.

Likewise, when the defendant, upon the demand of the plaintiff, has appointed someone vekyl for litigation, he cannot dismiss him in the absence of the plaintiff.

1522. The vekyl can resign the vekyalet.

But, as stated above, if the right of another is depending he cannot resign, and is compelled to perform his vekyalet.

Vekyl can resign unless third party has rights.

1523. When the principal has dismissed his vekyl, until notice of his dismissal comes to the vekyl, he continues as vekyl, and his disposition of property up to that time is good.

Notice of dismissal, necessary.

1524. When a vekyl resigns, it is necessary that he makes his principal know of his resignation. And until the principal knows that he has resigned, he remains responsible as vekyl.

Notice of resignation necessary.



Payment to vekyl without notice of dismissal.

1525. The principal can dismiss a person who is vekyl to receive a debt, in the absence of the debtor.

But if the creditor has appointed him vekyl in the presence of the debtor, until the debtor has information, the dismissal is not good.

In this case, if the debtor pays his debt to him, without knowing of his dismissal, he is free from his debt.

End of agency by completion of work.

1526. On the completion of the work for which the vekyl was appointed, there is an end of the vekyalet, and the vekyl naturally is released from his vekyalet.

Death of principal.

1527. By the death of the principal the vekyl is discharged. But when the right of another is dependent, he is not discharged. (See Art. 760).

Death of principal.

1528. By the death of the principal the vekyl of the vekyl also is discharged. (See Art. 1466).

Death of vekyl.

1529. A veyalet is not inherited, that is to say, when the vekal has died, no right to the vekyalet remains. And so, the heirs of the vekyl do not stand in his place.

Madness of principal or agent.

1530. If the principal or vekyl becomes mad, the vekyalet becomes void.

## BOOK XII

*Is about settlement of a dispute (sulh, Art. 1531), and release (ibra, Art. 1536), it includes a preface and four chapters.*

### THE PREFACE

*Explains some technical terms in the Sher' Law.*

Sulh

1531. "Sulh" is a contract removing a dispute by consent. And it becomes a concluded contract by offer and acceptance.

Musalih.

1532. "Musalih" is someone who makes a contract of compromise (sulh).

Musalih aley-h.

1533. "Musalih aley-h" is the price of the compromise (sulh).

Musalih an-h

1534. "Musalih an-h" is the thing which is claimed by the plaintiff (muda'a bih).

'An Iqrar sulh.

1535. Sulh (compromise) is divided into three divisions.

The first division is 'an iqrar sulh, which is a compromise which takes place on the admission of the defendant.

'An inkar sulh.

The second division is 'an inkar sulh which is a compromise which takes place on the denial of the defendant.



The third division is 'an sekyut sulh which takes place upon the silence of the defendant, who neither admits nor denies.

'An Sekyut sulh.

1536. "Ibra" (release) is divided into two.

Ibra.

The first is ibra-i-isqat and the other ibra-i-istifa.

"Ibra-i-isqat" is for someone to make free another person by dropping all the rights which he has against him, or by subtracting or diminishing a certain quantity of them.

Ibra-i-isqat.

This is the ibra (release) taken for discussion in this book about sulh (compromise).

"Ibra-i-istifa is a kind of admission (iqrar, Art. 1572), it consists of someone admitting he has received his right from another person.

Ibra-i-istifa.

1537. "Ibra-i-khas" is to release someone from an action depending on a particular thing, like an action to recover money arising from a house, or chiftlik or some way.

Ibra-i-khas.

1538. "Ibra-i-'amm" is to release someone from all actions.

Ibra-i-'amm.

#### CHAPTER I.

*Is about the making of a contract of compromise (sulh) and a release (ibra).*

1539. It is a condition that the person, who makes a compromise be of sound mind. There is no condition that he should be of age.

Competency of persons.

Therefore, a settlement of an action by a madman or person of unsound mind (Art. 945), or an infant who has not understanding (Art. 943), is never good.

As regards a compromise made by an infant who is released from control (Art. 942), it is good, if there is not a clear loss.

So that when someone claims by action something from an infant who is released from control, and the infant makes an admission, there is a good 'an iqrar sulh' (Art. 1535).

An infant free from control (Art. 942), can make a good contract of settlement upon the terms that he gives time for payment of his claim.

And when he has made a settlement for a part of what he has to receive, if he has strong evidence (beyyine, Art. 1676), his settlement is not good, and if there is not strong evidence, and it is known that his opponent is ready to take an oath, the settlement is good.

And when he claims by action property from another, if he settles for the amount of its value, it is good.



But if he settles for an amount excessively less than the value of that property, it is not good. (Note as to what is excessive, See Art. 165).

Settlement  
by natural  
guardian of  
infant.

1540. If his natural guardian has made a compromise in the lawsuit of an infant, if there is not clear loss to the infant, it is good. And if there is clear loss, it is not good.

Therefore, when someone has brought an action to recover so many piastres from an infant, and the father of the infant, has made a compromise upon the terms, that he is to pay from the money of the infant, the settlement is good, if the plaintiff has strong proof (beyyine). And if the plaintiff has not strong proof, the settlement is not good.

And when an infant has money to receive owed to him by another, if the father makes a settlement by deducting a part of it, if there is strong proof, it is not good.

And if there is not strong evidence (beyyine) and it is known that the opponent is ready to take an oath, in that case the settlement is good.

And if the natural guardian makes a compromise about a property for the value of the claim, it is good. But if there is excessive loss, the settlement is not good. (Note, See Art. 169).

Release by  
minor or  
madman.

1541. Generally a release made by a minor, or a madman, or a person of unsound mind (Art. 945), is not good.

Agent for  
litigation  
cannot settle.

1542. A vekyalet (Art. 1449), for litigation does not cause a vekyalet to settle.

Therefore, when someone is appointed vekyl to bring an action against another, and he, without permission, settles that claim, it is not good.

Vekyl to  
settle action.

1543. When someone has appointed another his vekyl (Art. 1449), to compromise an action, and that person under his vekyalet (Art. 1449), makes a compromise, the price of the compromise is binding on the principal.

The vekyl is not liable to a claim, or is there a demand upon him for it, unless the vekyl be surety for the price of the compromise. In that case, by reason of his suretyship, he is liable to a claim.

And again, when a vekyl has made a settlement by admission upon the terms of giving property for property, if he makes it in his own name, in that case the vekyl becomes liable to a claim. That is to say, the price of the compromise is recovered from him and he has recourse to the principal.



*For example.*—When a vekyl by his vekyalet has made a compromise for so many piastres, the payment of that sum by the principal is necessary. The vekyl is not liable for it.

But if he says "Settle for so many piastres, I am surety for it," in that case, this money is recovered from the vekyl and he has recourse to the principal.

And again, when a compromise by admission has taken place upon the terms of giving property for property, and the vekyl has made the compromise, saying "Compromise with me the action of such a one," in this case also by reason of its being like an exchange of property for property (bey', Arts. 105, 120), the price of the compromise is recovered from the vekyl, and he has recourse to the principal.

1544. When a third person, who is not authorised, *i.e.*, who without any order, has compromised a lawsuit which is going on between two persons, if he becomes responsible for the price of the compromise, or, if he makes the price of the compromise attach to his own property, saying "Upon such a property of mine," or if he has pointed to money, or merchandise which is present, saying, "Upon such a sum of money," or, "Such a watch," or not becoming responsible, and not attaching it to his own property, or pointing to his own property, generally he says "I have compromised for so many piastres" and hands over that quantity of money, in these four cases the compromise is good, and that person becomes a giver.

Settlement  
of action by  
third party.

And if, in the fourth case, he does not hand over the price of the compromise it is dependent on the consent of the defendant, if he permits it, the compromise is lawful, and the price of the compromise is payable by the defendant. And, if he does not permit it, the compromise is void, and the action remains in its existing state.

## CHAPTER II.

*Is about the state and conditions of the thing in dispute  
and the price of the compromise.*

1545. If the consideration for a compromise is corporeal property ('ayn, Art. 159), it is like a thing sold (Art. 151), and if it is a debt, it is like the price of a thing sold (Art. 152), therefore, a thing which in sale can be the thing sold, or the price of the thing sold, can also be the consideration for a compromise.

Where con-  
sideration is  
a thing or a  
chose in  
action.

1546. It is a condition that the price of the compromise be movable or immovable property (mal, Art. 126), and the mulk (Art. 125) property of the person who makes the compromise.

Price of  
compromise.



Therefore, if the person who makes the compromise give, as the consideration of the compromise, the property of another, the compromise is not good.

When consideration or subject-matter of settlement must be known.

1547. If it is necessary to receive and deliver either the consideration for the compromise, or the subject-matter of the compromise, its being known is necessary.

And if it is not necessary to receive and deliver it, its being known is not a condition.

*For example.*—When one person brings an action claiming a right in respect of a house in the possession of another, and the other sues claiming a right in respect of a garden in the possession of the former. And the two of them without defining the subject-matter in dispute, make a settlement on the terms that they are to stop their actions, the compromise is good.

Likewise, if someone brings an action claiming a right in a house in the possession of another, and without defining the subject-matter of the action, they make a compromise upon the terms, that the defendant pays him a fixed sum and he abandons his action, it is good.

But if they make a compromise upon the terms, that the plaintiff pays a price to the defendant, and he gives to him his right, it is not good.

### CHAPTER III.

*Is about the thing in dispute and consists of two sections.*

#### SECTION I.

*Is about a compromise in respect of corporeal property*  
(‘ayn, Art. 159).

1548. If a compromise on the confession of the defendant (Art. 1535), of an action about a known thing (mal, Art. 26), takes place, on the terms of a thing being given, it is like a transfer of property for property (Art. 105).

In this case, option for defect, option on inspection, and a condition for option are of force, and if either the thing in dispute, or the price of the compromise is immovable property, the right of action for pre-emption is in force.

Pre-emption.

And if the whole or part of the thing in dispute is taken by a person who has a right to it, that amount of the price of the compromise which has been given by the plaintiff to the defendant, that is to say, the whole or the part of it, is recovered back.

Compromise on confession for a thing is like a sale.



And if the whole or part of the price of the compromise is taken by a person who has a right to it, the plaintiff requires from the defendant that amount, that is to say, the whole, or the part of the subject-matter of the dispute.

*For example.*—Someone brings an action to recover a house from another, and the other confesses that the house is his, and together they make a compromise upon the terms of paying so much money as the price. The plaintiff becomes as if he has sold that house to the defendant, and in this case, as explained above, the rules as to sale (bey Art. 105) are in force.

1549. If in an action about a thing (Art. 126), a compromise on the confession of the defendant takes place, upon the terms of benefit from property being given it is like a hiring. In this case also the rules for hiring are in force.

Compromise on confession for a use, is like a hiring.

*For example.*—If someone, in an action about a garden, makes a compromise, upon the terms, that he is to stay so much time in the defendant's house, he becomes one who has rented for that time that house, on the consideration of the garden.

1550. The making of a compromise when the defendant denies or is silent is a putting a stop to the dispute, as regards the defendant by releasing him from the oath, and as regards the plaintiff, the giving of a thing in exchange for that taken away.

Settlement when defendant denies or is silent.

Therefore, when immovable property is the price of the compromise, the right of pre-emption is in force. And when immovable property is the subject of the dispute, the right of pre-emption is not in force.

And if the whole or part of the thing in dispute is taken by someone who has a right to it, the plaintiff returns to the defendant that quantity, *i.e.*, the whole or part, of the price of the compromise, and begins an action with the person having the right.

And if the whole, or part, of the price of the compromise is taken by a person who has a right to it, the plaintiff goes back to his action in respect of that amount.

1551. When a person brings an action about a known thing, *e.g.*, a garden, and makes a compromise for a certain amount of it, and releases the defendant from the action for the rest, he has received the certain amount of his rights and has stopped the action for the rest, *i.e.*, the right of action which he had for the rest is destroyed.

Settlement for part.



## SECTION II.

*Is about making a compromise for a debt, i.e., money to be received, and other rights.*

On terms of taking part.

1552. If someone makes a compromise, on the terms of getting part, of what he has to receive, which is owing to him by another, by the payment of the part, the rest is destroyed, i.e., he has released the other person from the remainder.

By giving delay.

1553. If someone makes a compromise on the terms of making payable at a later date whatever he has to receive at present, his right to payment in the present is destroyed.

For payment in base coin.

1554. If a person makes a compromise on the terms that he is to take what he has to receive in good coin, in base coin, his right to receive good coin is destroyed.

As to rights other than debts.

1555. In actions for rights, like a right to take water, a right of pre-emption, and a right of way, to compromise, by giving a price for being released from the oath, is good.

## CHAPTER IV.

*Is about the consequences of a compromise and a release, and consists of two sections.*

## SECTION I.

*Sets out precepts relating to the consequences of a compromise.*

One party cannot revoke.

1556. When a compromise is complete, one of the parties alone cannot go back from it. And the plaintiff by the compromise becomes the owner of the price of the compromise, and there no longer remains a right of action. And the defendant cannot demand back from him the price of the compromise.

Binding on heirs.

1557. If one of the parties dies, his heirs also cannot annul his compromise.

When revokable.

1558. If the compromise is like the giving of property to replace another property, the two parties can set it aside by consent. And if it is not in effect the giving of property to replace another property, and contains the putting an end to certain rights, its revocation is never good, (See Art. 51).

Compromise on terms of being freed from oath.

1559. When there is a contract or compromise on the terms of paying a price for being freed from the oath, the plaintiff has lost his right of action, and no longer can make the defendant take an oath.



1560. In case there is destroyed the whole, or part of the price of the compromise, when it has not yet been handed to the plaintiff, if it is one of those things which are fixed and determined, it is as if it had been recovered by someone who has a right to it.

Destruction of price of compromise before delivery.

*i.e.*, when the compromise has taken place on the admission of the defendant the plaintiff recovers from the defendant the whole, or part of the thing in dispute, and when the compromise has taken place on the denial of the defendant, or without his admitting or denying, the plaintiff goes back to his action. (See Arts. 1548 and 1550).

And if the price of the compromise is a debt, *i.e.*, if it is composed of things not known and fixed, like, so many piastres, it does not injure the compromise, it is necessary that the plaintiff be given by the defendant an amount equal to that lost.

## SECTION II.

*Sets out precepts relating to the consequences of a release.*

1561. If someone say "I have no lawsuit or dispute with such a person," or, "I have no right against such a person," or, "I have settled or stopped the action which I have with such a one," or, "My right against such a one does not remain", or, "I have received my right in full from such a person," he has released that person.

Release, what is.

1562. If someone has released another from a right, that right is destroyed. No longer can he bring an action against him. (See Art. 51).

Right is lost.

1563. A release does not include things which happen afterwards.

Things subsequent not included.

That is to say, when someone has released another person, the rights, which existed before the release, are destroyed, on the other hand he can bring an action for rights which are recent and after the release.

1564. If a person releases another from an action relating to a particular thing, it is an *ibre-i-khas* (Art. 1537), an action connected with that matter cannot afterwards be heard. But he can bring an action for his right in connection with any other matter.

Release of action about a particular thing.

*For example.*—If someone has released his opponent from his claim to a house, his action relating to that house can no longer be heard.

But his claim relating to a *chiftlik* or other matters, is heard.



General  
release.

1565. If someone say "I have freed such a one from all actions" or "I have no longer any right against him," it is a general release, he can no longer claim any right which existed before the release.

So far is this so that if there is a right of action arising out of suretyship, it is not heard.

So that, if one brings an action, saying "You were surety for such a one before the release," it is not heard, and a person cannot bring an action, saying "You were surety for someone I have released before his release." (See Art. 662).

Subsequent  
recovery by  
third person.

1566. When someone sells property and receives the price, and has released the purchaser from all actions relating to the thing sold, and the purchaser has released him from all actions relating to the above mentioned price, and when a document to this effect has been given, if the thing sold is taken by a person who has a right to it, there is no effect from the release, the purchaser can claim from the seller the price he has paid. (See Art. 52).

Persons re-  
leased must  
be known.

1567. It is necessary that the persons released be known and determined.

Therefore, if a person say "I have released all my debtors" or "I have no right against anyone", his release is not good.

But if he say, "I have released the inhabitants of such a quarter," if the inhabitants of that quarter are persons who are known and numbered, the release is good.

Acceptance  
not neces-  
sary.

1568. A release is not dependent on acceptance. But by a refusal it is rejected.

So that when one person has released another, there is no condition that that person should accept.

But if at that meeting he refuses, saying "I do not accept", that release is rejected, *i.e.*, it has no effect.

But if, after he has accepted the release, he refuses, the release is not rejected.

And again, if a creditor releases a person who accepts a hawale, or, a creditor releases a surety, and the person who accepts the hawale, or the surety refuses the release, the release is not rejected.

Release of  
dead person.

1569. The release from his debts of a person who is dead, is good.

Release  
made in last  
illness.

1570. If a person in his last illness releases one of his heirs from his debts, it is not good or *nafiz* (Art. 113).



But if he releases a person who is not his heir from his debt, it is held good for a third of his property.

1571. If a person in his last illness, whose estate (tereke) is submerged in debt, releases one of his debtors from his debts, it is not good and nafiz (Art. 113).

By insolvent in his death sickness.

Imperial Irade,  
6th Shewal, 1291.

### BOOK XIII.

*Is about an admission and contains four Chapters.*

#### CHAPTER I.

3 Destour,  
399.

*Is about the conditions of an admission.*

1572. "Iqrar" is for someone to admit the right of another against himself.

Definitions.

That person is called "muqirr".

Iqrar.

Muqirr.

The person in favour of whom the admission is made is called "muqirr leh".

Muqirr leh.

The right admitted is called "Muqirr bih." 2, C. L. R., 153.

Muqirr bih.

1573. It is a condition that the person, who makes the admission, should have arrived at years of discretion.

Infant and lunatic cannot make.

Therefore, the admission of an infant, madman, or person of unsound mind, male or female, is not good.

And the admission of their natural or appointed guardian against them, is not good. (Compare Art. 1634).

By guardian not good.

But an infant who has discretion (Art. 943), and is freed from restraint (Art. 942), in matters which are allowed by the permission given him to act, is like a person of full age.

Infant freed from restraint.

1574. There is no condition that the person in whose favour the admission is made should be of sound mind.

In favour of infants and lunatics good.

Therefore, if a person makes an admission about property in favour of an infant, who has not understanding (Art. 943), it is good, and he must give up that property.

1575. With regard to an admission the consent of the person, who makes the admission is a condition.

By force, not good.

Therefore, an admission made by compulsion or force is not good. (See Art. 1006, 2, C. L. R., 153).

1576. It is a condition that the person who makes an admission is not restrained from managing his own property. See Sections 2, 3 and 4 of the book on hajr (restraint, Book IX).

Person under restraint.



Must not be  
contrary to  
clear facts.

As to know-  
ledge of per-  
son in whose  
favour it is  
made.

Admission  
in favour of  
one of two  
persons.

When sub-  
ject-matter  
of admission  
must be  
known.

1577. It is a condition that the clear state of things should not contradict an admission. Therefore, if an infant whose body does not bear signs of being of age, make an admission, saying "I am of age", it is not good and no attention is paid to it.

1578. It is a condition that the person, in whose favour an admission is made, should not be unknown by an excessive ignorance, but a slight want of knowledge does not prevent the validity of an admission.

*For example.*—If a person makes an admission, by pointing to certain property in his possession, and saying "This is some man's property," or if he makes an admission by saying "This property belongs to one of the inhabitants of such a town" and the inhabitants of the town are not numbered, that person's admission is not good.

But if he say, "This property belongs to one of those two persons", or, if he say, "It belongs to one of the inhabitants of such a quarter," and the inhabitants of that place are a limited people, *i.e.*, are considered a numbered people, the admission is good.

And in case, in the above way, a person has said, "This property belongs to one of those two people," if those two persons agree, they can take the property from the man who made the admission. And after taking it, they become owners in common of that property.

And if they differ, each of them can require the oath of the person who made the admission that it is not his own property.

And if the person who made the admission, refuses the oath of both of them, that property again is jointly owned between those two persons.

And if he refuses the oath of one only, that property belongs absolutely to that person, whose oath he refused.

And if he takes the oath for both of them, the person who made the admission is free from their action. The property belongs to him and remains in his possession.

(Note.—As to what is a limited number of inhabitants. See Art. 1646).

## CHAPTER II.

*Is about the ways in which an admission is valid.*

1579. An admission which makes a thing known, is good; and an admission which leaves a thing unknown, is also good.

But in regard to contracts, like sale and hire which are not



valid where there is ignorance, there being ignorance of the subject-matter of the admission prevents the validity of the admission.

Likewise, if someone say "There is a thing belonging to such a one entrusted to me," or, "I have taken wrongfully or stolen the property of such a man", the admission is good.

It is compulsory on him to declare and define that unknown thing entrusted, or property wrongfully taken, or stolen.

But if he say, "I have sold something to such a one," or "I have taken on hire a thing from him," the admission is not good, and it is not compulsory for him to say, what is the thing which he sold or took on hire.

1580. An admission is not dependent on the acceptance of the person in whose favour it is made.

Acceptance  
not neces-  
sary.

But by his rejection it is rejected, its effect does not remain.

Rejection.

And if the person, in whose favour the admission is made, rejects a part only of the thing admitted, as regards that part only does the admission cease to have effect. The admission is good, as regards the part not rejected.

1581. If there is a difference between the person who makes an admission, and the person in whose favour it is made, as to the cause of right admitted, this difference of theirs does not prevent the validity of the admission.

Difference as  
to subject-  
matter does  
not invali-  
date.

*For example*—If someone bring an action claiming 1,000 piastres as due under a loan, and the defendant admit that 1,000 piastres is due as the price of a thing sold, the difference between them in this way does not prevent the validity of the admission.

1582. To ask for a compromise for a property is like an admission as to that property. But to ask for a compromise of an action about a property is not like an admission as to that property.

Offer to  
compromise,  
effect of.

So that, if someone has said to another, "Pay me my claim of 1,000 piastres which you owe me," and that person ask for a compromise saying "I will make a compromise of 700 piastres for that sum" he has admitted the 1,000 piastres which were demanded. But if he says "I will compromise the action for these 1,000 piastres," and seeks a compromise only to avoid a dispute, he has not admitted the 1,000 piastres, which were claimed.

1583. A person's having asked to buy, or hire, or borrow property in the possession of another, or, his having said, "Make me a present of this property," or, "Give it to me to take care of," or if the other person says to him, "Take this property to take care

Implied ad-  
mission of  
title.



of" and he accepts, there is an admission made by that person that the property is not his.

Dependent  
on a con-  
dition, is  
void.

1584. An admission dependent on a condition is void.

But if it is made dependent on a time which is a good time for a deferred obligation according to the custom of men, it is accounted for an admission of a debt payable in the future.

*For example*—If someone say to another, "If I arrive at such a place," or "If I undertake such a business," I am indebted to you for so many piastres this admission is void, the payment of the sum mentioned is not necessary.

But if he says "When the first of such a month," or "The 26th October (o. s.) comes I am indebted to you for so many piastres" it is considered the admission of a debt payable in the future, and when that time comes, the payment of that sum of money is necessary. (See Art. 40).

As to thing  
owned in  
common.

1585. An admission that a thing is owned in common is good.

Therefore, after a person has admitted to another that he has an undivided share, like a half, or a third, in immovable mulk property which he possesses, and that person has confirmed it, if the person, who made the admission, dies before the division and delivery, it does not prevent the validity of that admission of the undivided share of the property.

Admission  
by signs of  
dumb.

1586. An admission made by the known signs of a dumb person are held good. But the admission by signs of a person who can speak is not considered.

*For example*—If someone says to a person who can speak "Has such a one a claim against you for so many piastres" that person does not admit the claim by bowing his head.

### CHAPTER III.

*Is about the consequences of an admission and contains three sections.*

#### SECTION I.

*Is about the general consequences.*

Binding  
unless dis-  
proved.

1587. Every one is judged by his admission according to Art. 79. But if it is made false by the decision of the judge, the admission is without effect.

So that, if a person turns up who has a right to a thing, which is in the possession of another, who has bought it, in case



the latter person has said at a trial for the purpose of claiming it, "This thing was the property of such a one, he sold it to me," when the former person has proved his claim, and the judge also has given his judgment, the purchaser, by recourse to the seller, can recover from him the price of the thing sold. And although, at the trial, he opposed the action of the person, who had a right to the thing, by admitting that that thing was the property of the seller, he is not prevented from going back from that because the effect of the admission does not remain by reason of its having been found to be false by the judgment of the judge.

1588. It is not lawful to go back from admissions concerning the rights of people.

So that, after someone has said, "I owe so many piastres to such a one," if he say, "I go back from my admission", no attention is paid to it. He is judged by his admission.

As to rights of people, cannot be gone back from.

1589. If anyone maintains that he has not spoken the truth in an admission which has been made, the person in whose favour the admission was made, is made to take an oath that it is not false.

Denial of truth of admission by person who admits.

*For example.*—After a person has given a final voucher (sened) which says "I borrowed so many piastres from such a one," if he says, "Although in truth I gave a voucher (sened) which says I borrowed those piastres," I have not received from him the sum of money mentioned up to the present time, the person in whose favour the admission is made, is made to take an oath that there has not been falsehood in the admission of the person. (2, C. L. R., 153, 177, 3, C. L. R., 185).

1590. When someone has made an admission, saying to another person, "You have to receive so many piastres which I owe you," and that person says, "The money to be paid is not mine, it belongs to such a person", and that person also confirms it, that money becomes the property of the second person in whose favour the admission is made, but the right of receiving it belongs to the first person, *i.e.*, if the second person, in whose favour the admission is made, claims it from the debtor, there is no compulsion on the debtor to pay it to him. However, if the debtor of his own will pays the debt to the second person in whose favour the admission is made, he is free from his debt. The first person cannot claim it again from the debtor.

Statement by person that debt admitted is not his, but another's.



## SECTION II.

*Is about the denying of ownership and the title to a thing which is lent.*

As to vesting property.

1591. If the person who makes an admission, in his admission, makes the subject-matter of the admission attach to himself, as he has made it a gift to the person in whose favour the admission is made, it is not complete until there has been delivery and receipt.

And if he has not made it attach to himself, he admits that the subject of the admission was the property of the person, in whose favour the admission was made, before the admission, and denies ownership.

*For example.*—If someone say, “All my properties, and things in my hands belong to such a one, I have no connection with them at all,” as he has made a gift to that person of all his properties and things which are in his hands at that time, delivery and receipt are necessary.

And if he says, “Except the clothes which I am wearing on me, all the property and things said to be mine belong to such a one, I have no connection with them at all”, except the clothes which he is at that time wearing, which are connected with himself, that is to say, are said to be his, he has denied the ownership of all the properties and things mentioned, by his admission to that person.

But if, after this admission, he becomes owner of some things, that admission of his does not include those things.

Likewise, if he says “All my property and things which are in my shop belong to my eldest son, I have no connection with them at all,” as he has made a gift to the eldest son of all his property and things which are found in the shop mentioned, at that time, delivery is necessary.

And if he says “All the property and things which are in this shop of mine belong to my eldest son, I have no connection with them at all,” by the admission for his son of all the properties and things found at that time in the shop mentioned, he has denied ownership.

But if he puts some things into that shop afterwards, this admission of his does not include those things.

And likewise, if someone says “My shop in such a place belongs to my wife,” it is a kind of gift; delivery is necessary.



And if he says, "Such a shop which is said to be mine belongs to my wife," he has made an admission that that shop became his wife's property before the admission, and that it has not been his own property. (2, C. L. R., 153).

1592. If a person says of a mulk shop held by him by title deed, "This shop is the property of such a one I have no connection with it, and my name written in the title was lent for use."

Admission that name in title-deed was lent for use.

Or, if he says about a mulk shop bought from another by title-deed, "This shop I bought for such a one, the money which I paid for the price is also out of his property. And my name in the title-deed for it being lent for use has been registered," he is considered to have made an admission that that shop was in reality the property of that person.

1593. If someone says "So many piastres as are to the debit of such one by the written acknowledgment (sened), whatever they may be, although it is written in my name in the document (sened) the sum mentioned belongs to such a one, my name in the document (sened) was lent for use," he is considered to have made an admission that that person has in fact a right to the sum mentioned.

Admission that name in a document for debt was lent for use.

1594. If a person while in a state of health has made a denial of ownership by admission in the way above-mentioned, or, if he has made an admission that his name has been lent for use, his admission is held good, he himself during his life and his heirs, after his death, are judged by this admission.

Admission in health binds heirs.

But if he makes an admission in this way, while he is in his last illness, its effect is shewn in the next section.

### SECTION III.

*Is about the admission of a sick person.*

1595. "Maraz mevt" (mortal sickness) is the kind of sickness, such that in the condition of the sick person there has generally been a fear of death for him, and the sick person being unable to attend to his business, if he is a man, his business outside the house, if she is a woman, her business inside the house, has died before a year has passed on account of this condition. Whether the person has been confined to his bed or not.

Death sickness, what is.

And if, when the illness of the sick man is prolonged, and one year passes while he is always in one state, unless the illness of the sick man has got worse, and his state is changed, he is like a man who is well, and his transactions are like the transactions of a man who is well.



But if his illness gets worse and his state changes and he dies before a year passes, his state until he dies, calculating from the time of the change, is mortal sickness.

Admission by person in mortal sickness, when no heirs but spouse, a bequest.

1596. When a person has no heirs, or, a man has no heirs but his wife, or, a woman has no heirs but her husband, an admission made in mortal sickness is a kind of bequest and is held good.

Therefore, if a person who has no heirs, in mortal sickness, denies ownership by an admission that all his property belongs to someone, it is good, and after his death, his estate (tereke), cannot be interfered with by the officer of the Beit-ul-mal.

Likewise, if a person who has no heirs but his wife, in mortal sickness make a denial of ownership by an admission that his property belongs to his wife, or, a woman, who has no heirs but her husband, make a denial of ownership by an admission that her property belongs to her husband, it is good, and there can be no interference with the estate (tereke) of either of these by the official of the Beit-ul-mal, after death (2, C. L. R., 153).

If person recovers.

1597. If a person while he is sick makes an admission that property belongs to one of his heirs, and afterwards recovers from that sickness, this admission of his is held good.

Admission in favour of heir.

1598. If someone, after he has made, while in mortal sickness, an admission that existing corporeal property, or a debt, belongs to one of his heirs, dies, it is dependent on the permission of the other heirs. If they permit it, his admission is held good. If they do not permit it, his admission is not held good.

So much so that, if, in the lifetime, of the person who makes the admission, the other heirs have sanctioned it, after his death they cannot go back from the sanction they have given. That admission is held good.

And again an admission about an emanet is in every case good for an heir.

So that, if he admits in his mortal sickness that he has received his own property which was entrusted to his heir, or that the property of his heir, known to have been deposited with him, has been destroyed by him, the admission is good.

*For example.*—If he makes an admission, saying, "I have received property which was deposited on trust with such a son of mine," it is good and effect is given to it.

And again if he says "Such a son of mine has received, as vekyl, the money which I had to receive from such a one, and has delivered it to me, his admission is held good."



Likewise if he says, "The property of such a son of mine entrusted to me," or, "his diamond ring worth 5,000 piastres, which was lent to me to use, I have sold, and have used and spent the money realised in my own business," his admission is held good.

Compensation must be made for the value of that ring from his estate (tereke).

1599. In this subject by "heir" is meant a person who is an heir at the time of the death of the sick person.

"Heir",  
meaning of.

Provided that, if at the time of the death of the person who made the admission there arises a right to inherit from a new cause subsequent to the admission, it does not prevent the validity of an admission made, while the person was not an heir.

Likewise, if someone, in mortal sickness, makes admission to a strange woman, as to property, and afterwards, after he has married her, dies, the admission is nafiz (Art. 113).

But, when the right to inherit does not arise from a new cause, like this, but from an ancient cause, the admission again is not nafiz (Art. 113).

*For example.*—When a person, having a son, makes an admission for one of his brothers by the same father and mother, and after the death of his son, he himself dies, that admission does not become nafiz (Art. 113) by reason of his brother, in whose favour the admission was made, becoming his heir in this way.

1600. An admission, made in time of mortal sickness, and ascribing the thing admitted to a time of health, is in effect an admission made in time of mortal sickness.

Admission  
in sickness  
of thing hav-  
ing occurred  
while well.

Therefore, if someone makes an admission, while in a state of mortal sickness, that he has been paid, while he was well, so many piastres, which he had to receive from one of his heirs, unless the heirs permit it, it is not nafiz (Art. 113).

And again, if he makes an admission, in a time of mortal sickness, that he had given and delivered such a property of his to such a one of his heirs, while he was well, his admission unless the other heirs permit it, or it is proved by evidence, is not nafiz (Art. 113).

1601. The admission of a sickman, in a time of mortal sickness to a stranger, *i.e.*, to someone, who is not one of his own heirs, although it embraces the whole of his property, whether existing corporeal property, or a debt, is good.

Admission  
in favour of  
stranger by  
sick person.

However, if it is clear that he has been false in his admission, and it is known by many persons that the subject of the admission



was the property of the person who made the admission at the time of the admission, for a cause like sale, or gift, or transfer by inheritance, it is considered.

If the admission was not at the time when he was talking over his bequests it is like a gift, and delivery is necessary, and,

if it was at the time of his making his will, there is imputed to it the effect of a will, and whether it be a gift, or whether it be a bequest, it is held good only up to a third of his property. (2, C.L.R., 153.)

Debts incurred in health take precedence over debts admitted in sickness.

1602. Debts contracted in health take priority over debts contracted in sickness.

That is to say, the debts of a person, whose estate (tereke) is in debt, which attach to his debit while in a state of health, are made to take precedence over his debts which attach to his debit by virtue of admission made while in a state of mortal sickness.

So that, from the estate of a sick man, the debts contracted during health are paid first, and afterwards, if a surplus remains, the debts contracted during sickness are paid.

But if there are debts attaching to the debit of a sick man, while in a state of mortal sickness, from known causes, that is to say, from causes like purchase or borrowing, or destruction of property, being known and witnessed by persons, other than his confession, they are in the same position as debts contracted in health.

If the subject-matter of an admission is corporeal property ('ayn, Art. 159), effect is given to it in the same way.

That is to say, whatever kind of thing a person in a state of mortal sickness has admitted to a stranger to be his, the person, in whose favour the admission is made, has no right to the subject-matter of the admission, so long as the debts contracted in health, or, the debts which have the same effect as debts contracted in health, being obligatory from known causes as above-stated, have not been paid.

Admission of payment.

1603. If a person, while in a state of mortal sickness, admit that he had been paid what he had to receive from a stranger, consideration is taken.

If this claim had attached to the debit of that person, while he himself was in a state of sickness, this admission of his is good. But as regards the rights of those who became his creditors while he was in health, it is not nafiz (Art. 113.)



And if the claim had attached to the debit of that person, while he himself was in a state of health, in every case it is good, whether there be debts contracted in health or not.

*For example.*—When a sick person has sold property, while in a state of illness, and has afterwards admitted that he has received the price, it is good. If, however, there are persons who became his creditors while he was well, they can refuse to observe the admission.

But, if after a person has sold a property, while in a state of health, he makes an admission, while in a state of illness, that he had received the price, in every case, it is good. Even if there are persons, who became his creditors while he was in health, they cannot refuse to observe it.

1604. A person, by paying one of his creditors, while in a state of mortal sickness, cannot destroy the rights of the other creditors.

Payment while in mortal sickness.

But he can pay money which he has borrowed, and the price of property which he has bought while he was ill.

1605. In this subject kefalet bil mal (Art. 614), is of the same effect as an original debt. (2, C.L.R., 153.)

Suretyship.

Therefore, if a person, while in his last illness, has become surety for a debt or claim of his heir, it is not nafiz (Art. 113).

And if he has become surety for a stranger it is held good to a third of his property.

But if he has admitted in his last illness, that he has become surety for a stranger while in a state of health, it is held good for all his property, except that if there are debts contracted in health they are preferred.

#### CHAPTER IV.

*Is about an admission in writing (bil kitabe).*

1606. An admission in writing is like an admission by word of mouth. (See Art. 69).

Effect of.

1607. A person's giving another an order to write a confession for him is in effect an admission.

Order to write admission, signed or sealed.

Therefore, when someone gives a clerk an order, and causes him to write, saying "write an acknowledgment (sened) about my debt of so many piastres, which I owe to such a one," and has signed or sealed it, it is the same as an admission in writing, like his own acknowledgment (sened) written by his own hand.



Entries in  
merchant's  
books.

1608. The entries of a merchant, in his books which are in order, are also a kind of admission by writing.

*For example.*—If a merchant has made an entry in his own books that he owes a debt of so many piastres to someone, he has made an admission of a debt of that amount to that person, and when there is necessity, it is given the same effect as a verbal admission.

Vouchers for  
debts,  
receipts.

1609. When someone has himself written or caused a clerk to write an acknowledgment of a debt (*deyn sened*) which has been given to another, being signed or sealed, if it is written in form, *i.e.*, if it has been written in accordance with practice and custom, it is an admission in writing, and effect is given to it, like a verbal admission.

Receipts conforming to what is given by custom, *i.e.*, a formal memorandum of receipt is also of this kind. (2, C.L.R., 153.)

Admission  
of acknow-  
ledgement of  
debt—Estop-  
pel non-  
admission  
procedure.

1610. If someone as above-mentioned writes or causes another to write in accordance with practice and custom, an acknowledgment of debt (*deyn sened*), which he has delivered being signed or sealed, and while he admits that the acknowledgment of the debt is his own, denies the debt which it contains, no attention is paid to his denial, his payment of that debt is necessary.

But in case he has denied that the acknowledgment is his own, if his writing or seal is generally and well known, no attention is paid to his denial, it must be done in accordance with that acknowledgment.

And if his writing and seal is not generally and well known, he is asked to write and it is shewn to skilled persons. And if they report that the two are the writing of one person, an order is made upon that person to pay the debt aforesaid.

Finally, if the acknowledgment (*sened*) is free from the taint of fraud and suspicion of forgery, it is done in accordance with it.

But in case it is not free from suspicion, if the debtor has denied that that acknowledgment (*sened*) is his own acknowledgment (*sened*), and also denies the original debt, at the request of the plaintiff he is made to take an oath that the debt is not his, and that the acknowledgment (*sened*) is not his own. (1, C.L.R., 53, 2, C.L.R., 153, 3, C.L.R., 159 and 157.)

How far  
binding on  
heirs.

1611. If after someone, in the way above-mentioned, has delivered an acknowledgment for a debt (*deyn sened*) which is in the usual form, he dies, and his heirs admit that that acknowledgment



was made by the dead man, that debt of his must be paid out of the estate (tereke) of the dead man.

But in case they have denied that that acknowledgement (sened) was made by the dead man, if the dead man's writing and seal is generally and well known, it must be done in accordance with that acknowledgement (2, C.L.R., 153.)

1612. When there is found a purse full of money in the estate of a person who is dead, if there is upon it a notice written in the writing of the dead person, saying "This purse belongs to such a one, it is in my hands in trust to keep it," that person takes that purse from the estate of the dead man, there is no need for proof in another way.

Written notice as to property in hands of deceased.

Imperial Irade,  
9th Jemazi-el-evel, 1293.

#### BOOK XIV.

*Is about law suits and consists of two chapters and a preface.*

3, Destour,  
410.

#### THE PREFACE.

*Explains some technical terms of the Sher' Law.*

1613. "Dawa" is someone claiming his right in the presence of a judge from another.

Dawa.

"Mudda'i" is the name given to the person who makes the claim.

Mudda'.

"Mudda'i aley-h" is the name given to the person against whom the claim is made.

Mudda'i  
aley-h.

1614. "Mudda'a" is the thing which is claimed by the plaintiff. It is also called "Mudda'a bih."

Mudda'a.

Mudda'a  
bih.

1615. "Tenaqus" is the plaintiff having spoken words before, contradicting his own claim, i.e., causing his action to be of no effect.

Tenaqus.



## CHAPTER I.

*Is about the conditions and consequences of an action and the putting forward of a claim by the defendant to rebut the claim of the plaintiff (defi', Art. 1631).*

*It contains four sections.*

## SECTION I.

*Explain the conditions of the validity of an action.*

Competency  
of persons.

1616. It is a condition that both the plaintiff and the defendant be endowed with reason.

The action of a madman, or an infant without understanding (Art. 948), is not good.

But their natural and appointed guardians, by virtue of their guardianship, become plaintiffs and defendants in their places.

Defendant  
must be  
known.

1617. It is a condition that the defendant be known.

Therefore, if the plaintiff says, "I have so many piastres to receive from such a number of, or, from one of the inhabitants of such a village, without naming anyone, it is not valid. It is necessary that the defendant should have been designated.

Presence of  
defendant.

1618. It is a condition that the opponent be present at the time of the action. And in case the defendant has refused to come to Court, or, to send a vekyl, it will be explained in the book about the judge (Book 16) what shall be done.

Subject-  
matter of  
action must  
be known.

1619. It is a condition that the subject-matter or the action be known. If it is unknown, the action is not good.

How known,  
statement of  
claim.

1620. The subject-matter of an action is known by signs, or by description.

So that in the case of movable corporeal property, which is present at the hearing in Court, pointing to it is sufficient. And if it is not present, it is known by describing its qualities and description and value.

And in the case of immovable property, it is described by declaring its boundaries. And if it is a debt, it is necessary that there be described its genus, kind, qualities and amount.

It is made clear in the following articles.

Movable  
property.

1621. In case the subject-matter of the action is movable corporeal property, if it is present at the hearing, the plaintiff brings his action and pointing at the thing with his hand, says "Look ! I claim that it be taken and given to me. It is mine. This man lays hands on it without right."



And if it is not present at the hearing, but it is possible to send for it and produce it without expense, it is brought to the Court, in order that it may be pointed at in this way at the trial, when witnesses are heard, or the oath is administered.

And if it cannot be produced without expense the plaintiff describes it by its description and value.

But in actions about wrongful taking and pledge, it is not necessary to declare the value.

*For example.*—If he says “He has taken my emerald ring” and does not declare the value, and even if he says “I don’t know the value,” his action is good.

1622. If the subject-matter of the action are corporeal existing things different in their genus, kind and qualities it is sufficient to mention the value of them all together. It is not necessary to fix the value of each one separately.

Things of different kind.

1623. If the subject-matter of the action is immovable property, it is necessary at the time of the claim or when evidence is given, that its town or village, or quarter, and street, and its four or three boundaries, and if there are owners on the boundaries their names and those of their fathers and grandfathers be stated. But of a man who is well and generally known, it is sufficient to state the name and the name by which he is generally known, there is no need to state the names of his father and grandfather.

Immovable property.

Likewise, if that immovable property has no need of boundaries because it is generally known, there is no condition that the boundaries should be stated, either when the claim is made, or the witnesses are heard.

And again if the plaintiff makes his claim saying “the immovable property of which the boundaries are written in this title-deed is mine,” it is good. (See Art. 1692).

1624. If the plaintiff is correct in stating the boundaries, and states too few, or too many ziras, or donums, as the quantity of the immovable property, it does not prevent his action being good.

Immovables, mistake as to amount.

1625. In an action for the price of immovable property there is no condition that the boundaries should be stated.

Price of immovables.

1626. If the subject-matter of the action is a debt, it is necessary that the plaintiff state its genus, kind, quality, and quantity.

Debts.

*For example.*—It is necessary that he make a declaration stating its genus, gold or silver, stating its kind Turkish or English coins, and stating its quality, pure coin or base coin, and what is the amount.



But if he makes a claim, saying generally, so many piastres, his action is good, and it is considered to be the piastres, which are generally known according to the custom of the town. And in case two kinds of piastres are customary and the currency of one is held of higher value, it is considered to be that which has the lower value.

Likewise, if a man brings an action, saying, so many beshliks, it is considered to be for black beshliks, which are the base coins in our time.

When cause of ownership to be declared.

1627. When the subject-matter of an action is corporeal property, it is not necessary that the reason of ownership should be shewn. A claim for ownership without stating the cause, saying, "Perhaps this property is mine," is good.

But when the subject-matter of the action is a debt, the origin is required to be stated, *i.e.*, if it is the price of property sold, or, if it is rent, or, if it is a debt arising from some other cause, and in short from what cause the debt arises, is asked.

Admission not a cause of ownership.

1628. The effect of an admission is to make clear the subject-matter of the admission, not its coming into existence as a beginning.

Therefore, an admission cannot be a cause of ownership.

Therefore, if the plaintiff claim a thing in an action, and the only reason for taking it from the defendant is his admission, the action is not heard.

*For example.*—If the plaintiff brings an action, saying "This property is mine. And this man in possession of it has also admitted that it is mine," the action is heard.

But if he bring an action saying "This property is mine, because this man who is in possession of it has admitted that it is mine", it is not heard.

Likewise, if the plaintiff say I have to receive so many piastres from this man arising from a loan, and moreover he himself also has admitted that there is a debt of that number of piastres arising from this cause, it is heard.

But if he brings an action, saying, "On account of that man having admitted that there is a debt of so many piastres due to me arising from a loan, I have a right to that number of piastres and I claim it," the action is not heard.

Claim must be reasonable.

1629. It is a condition that the thing claimed be capable of being proved.

Therefore, the assertion of a thing that is not possible in reason or by custom, is not good.



Therefore, the action of a person is not good if he asserts as regards another whose birth is known or who is older than himself "This is my son."

1630. It is a condition that, in case the action is proved, something must be adjudged against the defendant.

*For example.*—If someone gives a thing to another as a loan for use, and a third person turns up, and brings an action, saying, "I am a relation of his. Let it be lent to me for use," it is not good.

Likewise, when someone appoints another his vekyl for a matter, and a third person turns up and brings a claim saying, "I am his neighbour and I am more fitted to be his vekyl," it is not good. Because by reason of every one being able to lend his property for use to whom he wishes and to appoint anyone he wishes his vekyl for his business, in case these actions are proved, no judgment results against the defendant.

## SECTION II.

*Is about an action by the defendant to repel the claim of the plaintiff.*

1631. "Defi'" is the putting forward a claim by the defendant to rebut the action of the plaintiff.

Defi' what is.

*For example.*—If someone brings an action for so many piastres due on account of a loan and the defendant says, "I have paid it," or "You released me from it", or "we have settled the matter," or "This sum of money is not a loan, since it is the price of certain property I sold you," or, "I made a hawale to you of that amount or money which I had to receive from such a one, and you gave me that sum of money for the hawale", he is considered to have made a "defi'" to the action of the plaintiff.

Again, if someone brings an action, saying, "You became surety for so many piastres which I had to receive from such a one," and that person claims that the debtor has paid the said sum, he is considered to have made a "defi'" to the plaintiff's claim.

And again, if a person has brought an action saying, "The property which is in the hands of another is mine."

And that person makes a claim, saying to him, "Formerly when such a man brought an action against me for that property, you gave evidence in favour of his claim," he is considered to have made a "defi'" to the plaintiff's action.

Again, if someone brings an action to recover so many piastres from the estate of a deceased person, and after he has

Claim must be capable of being adjudged against defendant.



proved his action, upon the heir denying it, if the heir claims that that debt was paid in the lifetime of the deceased, he is considered to have made a "defi" to the action of the plaintiff.

Trial of  
defence.

1632. When a person making a claim in defence (defi, Art. 1631) to an action has proved his defence, the action of the plaintiff is dismissed. And in case it is not proved, the original plaintiff is called upon to deny it on oath, at his request.

If the plaintiff refuses to take the oath, the defence of the defendant is proved. And if he takes the oath, his own original actions comes back.

Plea of  
hawale.

1633. When someone brings an action to recover so many piastres from another, and the defendant also makes a claim, saying "I made a hawale throwing on another person the payment of this sum to you, and both of you accepted the hawale", and if he proves this in the presence of the person who accepted the hawale, by his defence to the plaintiff, he is free from his claim. And if the person who accepted the hawale is not present, he has made a defence to the plaintiff, until the appearance of the person who accepted the hawale.

### SECTION III.

*Is about who are parties to actions and who are not.*

Who can sue  
and be sued.

1634. When a person has brought a claim for a thing, by a denial he becomes a litigant for the production of proofs for the claim, if in case the defendant admits the claim, there is judgment based on his admission.

And if judgment cannot be given, in case there is an admission by the defendant, by denial he does not become a litigant.

*For example.*—When a tradesman comes, and brings an action against a person and says "Such a person being your messenger (resul) took the property from me. Pay me its price."

By reason of the fact that, if that person admits the claim he is compelled to pay it, if he denies it, he becomes opposed to the plaintiff as litigant. In that case the action of the plaintiff and his evidence is heard.

But if the plaintiff brings his action, saying, a person who was your vekyl to buy bought it, by reason that the defendant is not compelled to pay the price to the plaintiff if he admits the claim (see Art. 1461), in case he denies it, he does not become



opposed as a litigant to the plaintiff. In that case the action of the plaintiff is not heard.

Guardians, natural and appointed, and Mutevelis are excepted from this rule.

So that when a person brings an action saying "I am entitled to property from infant's property," or, "vaqf property," by reason of the fact that the admission of a guardian or Muteveli is not nafiz (Art. 113), a judgment cannot be based upon it. But their denial being good, upon it the action of the plaintiff and his evidence is heard.

But in case the action has been brought upon a contract made by a guardian, natural or appointed, or by a Muteveli, their admissions also are given effect to.

*For example.*—When a guardian has sold an infant's property by leave of the Sher' Court, if an action is brought by the purchaser about it, the admission of the guardian is considered.

1635. In an action for corporeal property, the only person to be sued is the person in whose possession it is.

In action for corporeal property.

*For example.*—When someone wrongfully takes another's horse and sells and delivers it to a third party, and that other person wishes to recover the horse, he brings his action against the person, who is in possession alone; but if he wishes to make someone compensate him for the value of that horse, he brings his action against the person who took it wrongfully.

1636. When there is a person, who has a right to property, which has been sold, and he brings his action for it, it is considered.

Property which has been sold.

If the purchaser had received that property, the opponent at the time of the action and when evidence is given, is the purchaser only. There is no condition that the seller be present.

And if the purchaser has not yet received that property from the seller, by reason that the buyer is the owner and the seller is in possession, at the time of the action and the giving of the evidence, the presence of both of them is necessary.

1637. When there is a claim to recover a thing deposited from the custodian, or a thing lent from the borrower, or a thing let from the hirer, or a thing pledged from the pledgee, it is a

Action against bailor and bailee.



condition that there be present both the depositor and the custodian, and the borrower and the lender, and the hirer and the letter, and the pledgee and the pledgor.

But if the thing deposited, or the thing lent, or, the thing hired, or the pledge have been taken wrongfully, the custodian and the borrower and the hirer and the pledgee alone can bring an action for them against the person who takes them wrongfully. The presence of the owners is not necessary. And the owners alone cannot bring an action if these are not present.

Purchaser  
cannot sue  
bailee.

1638. A bailee is not an opponent to a purchaser in an action.

Therefore, if someone brings an action for a house in the possession of another, saying "I bought this house for so many piastres from such a person, "Deliver it to me." And the other says "The person you mentioned delivered this house to me to take care of," the action of the plaintiff is dismissed.

There is no necessity to prove that that person gave it to him to take care of.

But if the plaintiff says, "In truth that person had given you this house to take care of. But afterwards he sold it to me and made me vekyl to take delivery from you," if he proves the sale and his appointment as vekyl, he takes that house from the person to whose charge it was given.

Creditor  
cannot sue  
bailee of  
debtor.  
*Secus* per-  
son entitled  
to mainte-  
nance.

1639. A person, with whom a thing is placed for safe keeping, cannot be an opponent, in an action, to the creditor of the person who entrusted him with the thing.

Therefore, when a creditor proves in the presence of a custodian a debt owing to him by the depositor, he cannot recover the debt from the thing deposited with him.

But a person can sue a person, who is a custodian, to recover from money deposited with him, by an absent person, maintenance for himself, the giving of which is obligatory on the absent person, in accordance with Art. 799.

Creditor  
cannot sue  
debtor's deb-  
tor.

1640. The debtor of a creditor's debtor cannot be a litigant opposed to the creditor.

Therefore, if someone proves in the presence of a debtor of a dead man, that he has something to recover from the dead man, he cannot recover it from him.



1641. The purchaser from a purchaser cannot be an opponent in litigation to the seller.

*For example.*—After a person has sold a property to another person and he, on delivery, has sold and delivered to another person, the action of the seller against the second purchaser cannot be heard, if he says, "The first purchaser received that property without paying the price, pay it to me," or, "Give it to me to keep until payment of its price."

Seller cannot sue purchaser from purchaser.

1642. In actions brought for or against the dead person one of the heirs alone can be a litigant.

Actions for or against deceased person.

But in an action to recover corporeal property from the estate, if that property is in the possession of one of the heirs, he is litigant in the action. An heir who is not in possession cannot be a litigant.

*For example.*—One of the heirs alone can bring an action for a debt due from someone to the deceased, and after proof judgment is given for all the heirs for the whole of that debt.

But the heir who is plaintiff can recover his share only from him. He cannot receive the shares of the other heirs.

Again, when someone is going to bring an action to recover a debt from the estate, he can bring his action in the presence of one only of the heirs, whether there is property from the estate in the hands of that heir or not.

And when, in this way, there is an action in the presence of one heir alone, in case that heir also admits the debt, an order is made to pay that quantity only of the debt which falls on his share, and his admission does not affect the other heirs.

And if he does not make an admission, if the plaintiff proves his case in the presence of that one heir alone, judgment is given against all the heirs.

And when the plaintiff is going to take from the estate the debt that is adjudged in that way, the other heirs cannot say to the plaintiff "Prove that debt again in our presence". But they have a right to bring a claim to rebut (*defei*, Art. 1631), the action of the plaintiff.

And when, before partition, one is going to bring an action to recover a horse being part of the estate of the dead man, but in the possession of the heirs, saying, "It is my property, I left it with the deceased to take care of," the heir only who is in possession is a litigant against him. If he brings an action against the other heirs, it cannot be heard.



And when he brings an action against the heir in possession, if judgment is given on his admission, it does not affect the other heirs. His admission is only *nafiz* (Art. 113), as regards the amount of his own share. Judgment is given that the share which he had in the horse belongs to the plaintiff. And if the heir who is in possession has denied the action, if the plaintiff proves his action, judgment is given against all the heirs. (See Art. 78).

Joint owners  
of corporeal  
property  
other than  
heirs.

1643. In an action about corporeal property jointly owned by several persons by a cause of ownership other than inheritance, one share-holder cannot be the litigant against the plaintiff for the share of another.

*For example.*—When someone brings an action in the presence of one only of the part-owners of a house, which is owned in common between several persons, who have obtained it by purchase saying, “It is my *mulk* property” and proves his claim, and judgment is given, the judgment is limited to the share of the part-owner, who was present, alone, it does not affect the others.

Where the  
public is  
concerned.

1644. In an action about places which concern the public use, like a public road, when one only of the public is plaintiff, on the hearing of his action, judgment can be given against the defendant.

Where  
villages  
concerned.

1645. In an action about things, like rivers and pasture lands, the benefit of which is jointly owned between two villages, the inhabitants of which are not a limited number, the presence of some on each side is sufficient. But in case the inhabitants are a limited number, the presence of some is not sufficient, the presence of the *vekyls* of the two sides, or, of the whole of them is necessary.

What is a  
limited  
number.

1646. The inhabitants of a village, when they are more than 100, are not considered a limited number.

#### SECTION IV.

*Is about the plaintiff having made an antecedent statement contradicting his own action, i. e., making his action of no effect (tenaqs, Art. 1615.)*

By  
statement.

1647. An antecedent statement of the plaintiff contradicting his claim prevents an action for ownership.

*For example.*—When someone buys a house, that is to say, wishes to buy a house, and afterwards brings an action claiming that that property belonged to him before the purchase, it is not heard.



And again, after someone has said, "I have no claim against such a person," if he brings an action claiming something from that person, it is not heard.

Likewise, when someone brings an action against another saying "I gave you so many piastres to give to such a man. You did not give it and kept it in your hands. Fetch the money and pay it," and after the plaintiff has established it by evidence, on the defendant's denial, if the defendant changes his mind, and says "It is true you gave me so many piastres to give to that man, but I delivered it to him," and the defendant is going to take proceedings to avoid the claim (defi', Art. 1631), it is not heard.

And likewise, when someone has brought an action, saying, that a shop in the hands of another is his property. And the person in possession brings a claim saying, "It is true that shop was your property, but on such a date you sold it to me." And the plaintiff saying "there never was a sale and purchase between us" makes a complete denial. And after the person in possession has proved his claim, the plaintiff changes his mind and makes a claim saying "In truth that shop at that time I sold to you, but this was a bey' bil vefa, (a sale subject to redemption), or the sale was made in this way with a condition that makes the contract fasid (Art. 109)," his action is not heard.

1648. After a person has admitted that a property belongs to another person, if he brings an action, saying "It is mine," it is not good, and if he brings an action on behalf of another, as his vekyl, or appointed guardian, it is not good.

By admission.

1649. After a person has released another from all actions, if he brings an action claiming from him a property for himself, it is not good. But he can bring an action for another as vekyl or appointed guardian.

By release.

1650. After a person has brought an action claiming a property for another, if he makes a claim in Court on his own account, it is not good.

By claim on behalf of another.

But after he has made a claim for himself, he can make a claim on behalf of another as vekyl. Because sometimes a vekyl for a law suit makes the property attach to his own name, but a person himself a party to the action does not attach the property to the name of another.

1651. As one right cannot be demanded separately from two persons, in the same way one right arising from one cause cannot be claimed from two persons.

By claim against different persons.



Binds vekyl  
and heir.

1652. There is an estoppel (tenaquis, Art. 1652), also in the words of two speaking in one right, like, a vekyl and the person who appoints him, and an heir and the person from whom he inherits, in a case in which there would be an estoppel (tenaquis, Art. 1615) in an action of one person speaking.

So that, as regards a special matter, if a vekyl introduces a claim, contrary to a preceding claim by his principal, it is not good.

Cesser of  
estoppel  
on admission  
of opponent.

1653. By the admission of the opponent the estoppel (tenaquis, Art. 1615), is taken away.

*For example.*—If after someone has brought an action claiming so many piastres from another as a loan, he brings an action claiming that the said sum arose by way suretyship, and the defendant admits this, the estoppel (tenaquis, Art. 1615), is removed.

Cesser of  
estoppel on  
contrary  
finding by  
judge.

1654. By the judge finding that the statement is untrue, the estoppel (tenaquis) also is removed.

*For example.*—A person brings an action saying "The property in the hands of another is mine," and the defendant denies, saying, "It was the property of such a one, I bought it from him." If judgment is given on the plaintiff proving his case, the person against whom judgment is given has recourse against the seller for the price of that property.

And although at first, by reason of his having admitted that that property belonged to the seller, his having recourse was estopped as between them, by reason of this admission being falsified by the judgment of the judge, the estoppel (tenaquis, Art. 1615), is removed.

Where mis-  
take, no  
estoppel.

1655. When the excuse offered by the plaintiff as regards a thing which is concealed is clear, the making of the contradictory statement is pardoned.

*For example.*—If someone says, after he has hired a house, "While I was child my father bought this house for me. At the time of the hiring I had no information" and if he produces a final title-deed to this effect and demands the house from the lessor, his action is heard.

Also, sometime after a person has hired a house, if he hears that that house had passed to him by inheritance from his father, and brings an action against the lessor, his action is heard.



1656. The beginning of a division of the estate of a deceased person is an admission of the thing divided being held in common. Therefore, after the division, to bring an action, saying, "The thing divided belongs to me" is a contradictory statement destroying the action.

By beginning to divide estate of deceased.

*For example.*—If one the heirs, after the division of the estate, makes a demand saying "I bought one of the specific existing things, which were divided, from the deceased," or, "the deceased, while in a state of health, gave and delivered it to me," the demand is not heard.

But if he says "While I was an infant the deceased gave me that property. At the time of the division I did not know it," he is excused and his action is heard.

1657. When the agreement of the two sayings, which seem to be contradictory, is possible, and the plaintiff makes them agree, the contradiction destroying the action is removed.

If contradictory statement explained, no estoppel.

*For example.*—If a person who has admitted that he is the lessee of a house brings an action saying "the house is mine," the action is not heard.

But if he makes it agree, saying "I bought the house from the owner after I had hired it," his action is heard.

Likewise, when someone brings an action for a known quantity of piastres due under a loan, and the defendant, says, "I did not receive anything from you," or, "No transaction took place between us," or, "I do not know you," after the plaintiff has proved his case, if the defendant make a claim, saying, "I paid you that sum," or "You release me from it" by reason of his contradictory statement, his claim is not heard.

But when upon the statement of the plaintiff's action, the defendant, says "I owe you nothing," and after the plaintiff has proved his case, the defendant says "Yes, I did owe you that sum but I paid you," or you released me from it," if he claims and proves this, he can repel (defi') the claim of the plaintiff.

Likewise, if someone brings an action against another, saying, "There was a thing of mine like this deposited with you for safety, give it," and the defendant denies the action, and says "You never deposited a thing with me for safe keeping," after the plaintiff has proved his case, if the defendant wishes to repel (defi') the action, saying, "I had returned and delivered it to you," this defence (defi') is not heard.



If the thing entrusted is in his possession, the plaintiff takes the thing itself. If it is destroyed, he makes him compensate him for its value.

But if on the statement of the plaintiff's action, the defendant denies the action and says "There is no such thing of yours deposited with me, after the plaintiff has proved his case, if the defendant sets up a claim, saying, "Yes ! There was a thing of yours like that deposited with me, but I returned and delivered it to you, this claim of the defendant is heard.

Admission  
reduced into  
writing.

1658. After a person admits that an unconditional and valid sale has been entered into by him, and this admission of his has been reduced into writing, if he changes his mind, and contends that that contract was made subject to redemption, or in a manner which is fasid (Art. 109), his claim is not heard. (See Art. 100).

*For example.*—If someone, after he has sold and delivered his mulk house to another for a known price, goes before the judge and makes an admission, saying "I sold by a final and valid sale to such a one for so many piastres, my house which is bounded by these boundaries," after his admission is placed in a document, when he changes his mind, and brings a claim, saying "the above sale was subject to redemption," or "the contract was made with this sort of condition making it fasid (Art. 109)," his claim is not heard.

Likewise, if someone compromises an action which he has with another person, and goes before the judge and makes an admission that the contract of compromise was validly made, and after this admission of his has been put in writings, changes his mind, and brings a claim, saying, "the said compromise was made with this kind of condition making it fasid (Art. 109)," his claim is not heard.

By standing  
by.

1659. If a person, saying of a property, "It is mine," in the presence of another has sold and delivered it to a third party, and if the other person after seeing him, and having kept silence without excuse, brings an action, saying "That property is mine," or, "I have a share in it," it is considered.

If that other person is one of the relations of the seller, or her or his husband or wife, that action of his is absolutely not heard.

And if he is a stranger, his being present at the meeting where the sale was made, in that way does not alone prevent the hearing of his action.



But if, besides being present at the meeting at which the sale was made, he sees for a time the purchaser dealing with it as if he were dealing with mulk property, such as making buildings, or putting them down, or planting trees on that property, and has kept silence without excuse, if afterwards he brings an action as before-said, saying, "It is my property," or, "I have a share in it," again the action is not heard.

## CHAPTER II.

### *Is about the lapse of time.*

1660. Actions which do not affect the public or property included in that originally made Vaqf, such as actions for debt and for a thing deposited for safe-keeping and for immovable mulk property, and inheritance, and actions for the benefit and produce of dedicated property, and for a meshruteh tevliet and for the possession by ijaretein or muqata'a of immovable Vaqf properties, after being abandoned for 15 years are not heard.

3, Destour, 422.

Action for matters other than vaqf properties and affecting the public—fifteen years.

1661. Actions of the Muteveli and of persons who receive salary and victuals from the Vaqf in respect of the property included in that originally made Vaqf are heard up to 36 years.

Vaqf properties, thirty-six years.

But after the lapse of 36 years they are no longer heard.

*For example.*—After a person has possessed immovable property as mulk for 36 years, if the Muteveli bring an action saying "one time that immovable property was part of the Musteghillat of my Vaqf," he is not heard.

1662. Actions about a blind alley (tarik khas), the right of house water and rain water to drip and flow to the outside of a house (mesil) and the fixed share of a river (haq shurb) if on mulk immovable property, are not heard after 15 years have passed.

Ways, streams and water rights on mulk land fifteen years.

And if on immovable Vaqf property the Muteveli has the power to bring an action about them up to 36 years.

Vaqf property.

And in the same way as actions about Arazi Mirie are not heard after 10 years have passed, so actions about a blind alley (tarik khas), the right of house water and rain water to drip and flow outside the house (mesil) and the fixed share of a river (haq shurb), after they have been abandoned for 10 years, are not heard.



Time elapsed  
without  
excuse alone  
considered.

1663. In this chapter is considered, that is to say, the lapse of time, which prevents the hearing of actions, is the lapse of time which has taken place without excuse.

On the other hand consideration is not given to time which passes, in consequence of one of the excuses allowed by Sher' Law.

Excuses.

Such as, a person being an infant or madman or person of unsound mind, whether the plaintiff has a guardian or not, or a person being in a foreign country a long way off (*muddet sefer*), or his opponent being a person in power.

Where  
excuse time  
runs from its  
removal.

Therefore, the beginning of the time which elapses is considered to be from the removal of the excuse.

*For example.*—The time when a person is an infant is not considered in the time passed. The time elapsed from the date when he arrived at full age is considered alone.

Likewise, when a person's action is with one who is in power, if time elapsed in consequence of his not being able to bring his action, while the power of his opponent lasts, it does not prevent the hearing of that action.

The time elapsed is only considered from the date when the power ceased.

"Long distance",  
meaning of.

1664. "*Muddet sefer*" (time journey) is a distance from place to place of three days at a moderate rate of travelling, that is to say, eighteen hours.

Persons at  
long distance who  
meet.

1665. When there are two persons, one inhabiting one town and the other another town, and the towns are a long distance from each other (*muddet sefer*, Art. 1664). And the two persons meet each other every few years in one town. When one does not claim by action a thing from the other which is capable of trial, after the time of prescription has passed in this way, the action of one against the other which arose before the period in which the time ran, is not heard.

After action  
brought time  
does not run.

1666. If a person makes his claim against another person before the judge every few years, but his case is not decided. If in this way fifteen years pass, it does not prevent the hearing of the action.

But a demand and claim not made in the presence of the judge does not prevent the passing of the time.

Therefore, if a person demands and claims something in places other than the Court of the Judge, and in this way the time passes, the plaintiff's action is not heard.



1667. The time elapsed is considered from the date when the right accrued to the plaintiff to claim the subject-matter of the action.

Time runs from accrual of right.

Therefore, in an action for a debt payable after a delay, the lapse of time is only considered from the end of the delay. Because before the end of the delay the plaintiff had no right to demand and bring an action for that debt.

*For example.*—If a person brings an action, saying, "I have to receive so many piastres from you," for the price of a thing which I sold to you fifteen years ago, on a condition that there was to be a delay of three years for paying the price, the action is heard. Because twelve years only have passed, counting from the expiration of the delay.

Likewise, in an action by children of the second generation in respect of *vaqf* limited in favour of children from generation to generation, the time elapsed is only considered from the date of the extinction of the children of the first generation.

Because while the first generation existed, the second generation has no right to bring an action.

Again, in an action for the marriage portion payable on separation the beginning of the time elapsed is considered to be from the date of the time of separation or the death of one of the spouses. Because the marriage dowry payable on separation is not payable until separation or death.

1668. In an action to recover money against an insolvent person, the time elapsed is only counted from the conclusion of his insolvency.

Time does not run during insolvency of debtor.

*For example.*—If someone brings an action against another, who has been insolvent for fifteen years, and who it is known has recently made money, saying, "I bring an action. You have owed me so many piastres on account of such debt for fifteen years. I did not sue because you have been insolvent since that time, I bring the action now because you are now able to pay the debt," the action is heard.

1669. If a person has left his action as above-mentioned without excuse and the time has elapsed, that action if brought by himself, while he is alive, is not heard, and it is not heard if brought by his heirs on his death.

Heirs bound by.

1670. If an action is abandoned for one space of time by the ancestor and another space of time by the heirs, and the two times together pass the limit of the time for the limitation of the action, it can no longer be heard.

Ancestor and heir allowing time to pass.



Seller and  
buyer, donee  
and donor.

1671. A seller and buyer and a donor and donee are like an ancestor and heirs.

Therefore, if a person exercises absolute ownership over a building site for fifteen years; and the person, whose house is on the boundaries of that building site, keeps silence for fifteen years and afterwards sells that house to another; and the buyer brings an action, saying "that building site is the blind alley belonging to this house which I have bought," the action is not heard.

Likewise, if the buyer has kept silence for one period of time, and the seller for another period of time, and the two times together reach the extent of time for the limitation of actions, the action of the buyer is not heard.

Against  
some of the  
heirs.

1672. When as regards some of the heirs, the time has elapsed for an action for property of the deceased in the hands of another, and some other heirs have brought and proved a claim for that property, on the ground that the time has not elapsed as against them, by reason of some excuse, like infancy, judgment is given for the share of those heirs in the subject-matter of the action.

And this judgment does not extend to other heirs.

Lessee.

1673. When a person admits that he has been lessee of an immovable property, he cannot become owner of it by a lapse of a greater time than fifteen years.

But when he denies it, and the owner brings an action, saying, "that immovable property is mine. So many years ago I had let it to you. I always received the rent," it is considered.

If the letting is known amongst men, the action is heard. If not, it is not heard.

Admission  
in Court  
prevents  
prescription.

1674. A right is not destroyed by the time being passed for hearing an action.

Therefore, when an action is prescribed, and the defendant, in the presence of the judge, admits and avows explicitly that there is still a right against himself in the way claimed by the plaintiff in his action, no attention is paid to the lapse of time, judgment is given according to the admission of the defendant.

Admission  
out of Court  
does not  
prevent  
prescription.

But if the defendant has not made an admission in the presence of the judge, and the plaintiff claims that the defendant has made admission in another place, the original claim of the plaintiff is not heard, and his claim on the admission is not heard also.

Unless in  
writing.

But if the admission on which the action was based, was formerly reduced into writing in a document containing the known writing or seal of the defendant, and if the time of prescription has



not passed between the date of that document and the time when the action was brought, in that case, the action based on the admission is heard. (3, C.L.R., 4).

1675. No attention is paid to the lapse of time in actions about lands, the benefit from which concerns the public, like a public road, a river and a common pasture land.

Public lands  
no  
prescription.

*For example.*—After someone has held and possessed for fifty years without dispute a pasture which belongs specially to a village, if the inhabitants of the village, to which it belongs, claim it by action, the action is heard.

Imperial Irade,  
9th Jemazi el Akhir, 1293.

## BOOK XV.

*Is about evidence and the administering of an oath. It contains a preface and four chapters.*

4, Destour,  
93.

### THE PREFACE

*Explains some technical terms of the Sher' Law.*

1676. "Beyyine" is what strong proof is called.

Beyyine.

1677. "Tevatur" is the statement of a number of people, their having agreed together to tell a lie not being reasonably probable. (See Art. 1735).

Tevatur.

1678. "Mulk-i-mutlaq" is an ownership not restricted by one of the causes of ownership, like inheritance or purchase.

Mulk-i-  
mutlaq.

An ownership restricted by such a cause is called "Mulk bi sebebini."

Mulk bi  
sebebini.

1679. "Ziliet" is a person who actually has in his hand corporeal property, or whose right of disposal is proved by the disposition of properties as mulk.

Ziliet.

1680. "Kharij" is a person who is a stranger to the possession or right of disposition as above-mentioned.

Kharij.

1681. "Tahlif" is to administer the oath to one of the litigants.

Tahlif.

1682. "Tahaluf" is to administer the oath to both the litigants.

Tahaluf.

1683. "Tahkim hal," i.e., to give judgment for the present state, is a kind of "Istishab."

Tahkim hal.

"Istishab" is to give judgment in favour of the continuance of a well ascertained matter, of which the non-existence is not

Istishab.



suspected. Which comes to mean, the making a thing which is, was, or has been continue as it is, was, or has been.

## CHAPTER I.

*Is about the giving of evidence (Shehadet) and consists of eight sections.*

### SECTION I.

*Is about the description of evidence (shehadet).*

Shehadet.

1684. "Shehadet" is to give information by the word "shehadet," the two parties are face to face, and in the presence of the judge, when to prove the right which one person has against another. That is, to say, by saying "shehadet iderim" (I give evidence).

Shahid.

"Shahid" is the name given to the person who gives the evidence.

Mesh-hud leh.

"Mesh-hud leh" is the name given to the person for whom the evidence is given.

Mesh-hud aley-h.  
Mesh-hud bih.

"Mes-hud aley-h" is the person against whom the evidence is given, and Mesh-hud bih is the right proved.

Number of witnesses required.

1685. As regards the rights of people, the number of witnesses is two men or one man and two women.

But in places where it is impossible for men to have knowledge, women's evidence alone is received as regards the right to property.

Dumb and blind person.

1686. The evidence of the dumb and blind is not admissible.

### SECTION II.

*Is about the way of giving evidence (shehadet).*

Must be given at the trial.

1687. Evidence (shehadet) given outside the Court is not held good.

Hearsay not admissible.

1688. It is necessary that the witnesses should know personally that to which they depose, and that their evidence should be given in that way.

It is not permissible for them to give evidence saying, "By hearsay," i.e., "I heard from people."

Except, as to property being vaqf or death.

But if, with respect to property being vaqf, or to the fact of a person being dead, a person give evidence, saying, "I have heard from a trustworthy person," i.e., "I give evidence of this because I heard so from a trustworthy person," his evidence is held good.



In matters of a vilayet and death and parentage, it is permissible for a person to give evidence by hearsay, without saying that he speaks from hearsay, i.e., without so explaining the kind of evidence he gives.

And matters of vilayet, death and parentage.

*For example.*—If one says, "Such a man at such a date in such a time was vali" or "judge," or "Such a man died at such a time", and "Such a person is the son of such a one, I know it is so." "If he has given his evidence, and finished in this way, without saying "I heard it," if he has not examined any of these matters, or his age does not allow of his having examined them, his evidence is accepted.

And again, when he does not say "I heard from people." if he gives evidence saying, "We have not examined this matter," but so it is reputed amongst us and so we know, in every case it is permissible.

1689. If the witness does not say "shehadet iderim" (I give evidence), but only says "I know such a matter is so," or if he has said "I give information," it is not a giving of evidence.

How given by witness.

But if upon it the judge asks him "do you give evidence (shehadet) in this way," and he says "Yes! I give evidence (shehadet iderim) so," his doing so makes it a giving of evidence (shehadet).

There is no necessity that the word "shehadet" (Art. 1684) should be used, when explanation is given to explain existing things, like the reports of skilled persons.

Skilled witnesses.

Only these not being Sher' evidence (shehadet) are of the kind called giving information (ikhbar).

1690. If the person, for whom evidence is being given, and the person against whom evidence is being given, and the thing about which evidence is being given, are present, while the witness gives evidence, and he points to the three of them, his pointing in this way is sufficient. It is not necessary to declare the names of the father and grandfather of the persons, for and against whom, the evidence is given.

Evidence of persons and things. Description.

But when the giving of evidence (shehadet) relates to a dead man, or to the vekyl of an absent person, the witness must declare the names of their father and grandfather.

But if there is someone who is commonly and well known, it is enough for the witness to mention his well known name, because the main intention is a description which will distinguish him from others.



Evidence  
about  
immovables.

1691. In giving evidence about immovable property it is necessary to state the boundaries.

But if the witness does not declare the boundaries of the subject matter of the action, and declares that he will be able to shew them at its place, having gone to the place he is made to shew them.

Or refer to  
title-deed.

1692. When in accordance with article 1623 the plaintiff has brought an action relying on the boundaries in his title-deed, if the witness gives evidence, saying, he is owner of the property whose boundaries are written in the title-deed, it is good.

Claim by  
heir for debt  
or property  
of deceased.

1693. When a man has brought an action to recover so many piastres which the person, from whom he inherited, had to receive from another person, it is sufficient if the witnesses give evidence that the dead person had to receive that sum of money from that person. There is no necessity for an explanation, saying, it has been inherited by the heirs.

In case there has been claimed corporeal existing property in the place of a debt, *i.e.*, when there has been claimed certain known property of the ancestor in the hands of that person, judgment is the same.

Claim  
against  
estate of  
deceased.

1694. When someone brings an action to recover so many piastres from the estate of a deceased person, if the witnesses give evidence, that there is so much owing by the dead person to that person, it is enough. There is no necessity to say that it remained to his debit up to the time of his death.

In case existing corporeal property is claimed instead of a debt, *i.e.*, when that person has brought an action to recover certain known property of his own in the hands of the dead person, the matter is in the same way also.

Claim for  
debt.

1695. When a person brings an action to recover a certain sum of money from another, if the witnesses give evidence that that amount has been owing from that person to the plaintiff, it is sufficient. But if the defendant questions the remaining of the debt upto the present time and the witnesses say "We do not know if it remains upto the present time," their evidence is rejected.

### SECTION III.

*Is about the fundamental conditions of giving evidence.*

Must be a  
claim in  
Court.

1696. As regards the giving of evidence (shehadet) in private actions, it is a condition that there be a claim in Court first.



1697. Evidence which is given as proof of what is contrary to what is perceived is not admissible.

Not, when  
contrary to  
seen facts.

*For example.*—When someone has been seen alive, or a house has been seen in good condition, if evidence is given in proof of that person being dead, or of that house being a ruin, it is not received and no weight is given to it.

1698. Evidence, which is produced for that, which is contrary to what is proved by *tevatur* (Art. 1677), is not accepted.

Not, when  
contrary to  
what is  
generally  
known.

1699. Evidence is made lawful for the purpose of proving a right.

Not, when  
simple  
denial.

Therefore, evidence of pure denial, like "Such a one did not do that work," or, "Such a thing does not belong to such a one," or, "Such a one is not in debt to such a one," is not admissible. But evidence of a number of persons (*tevatur*) when it denies, is admissible.

*For example.*—If someone brings an action for so many piastres due as money lent, saying, "I lent so many piastres at such a place, at such a time, to such a person," when proof is given by a number of persons (*tevatur*) that he was in another place and was not in that place at that time, the evidence of that number of persons (*tevatur*) is received and the plaintiff's action is not heard.

1700. As regards the giving of evidence, it is a condition that there be no cause arising from the avoidance of debt or the accruing of gain, *i.e.*, the avoidance of harm or the production of benefit.

Interest of  
witness.

Therefore, the giving of evidence of ancestor for descendant or descendant for ancestor, *i.e.*, the evidence of father and grandfather and mother and grandmother on behalf of children and grandchildren, and also of children and grandchildren on behalf of father and grandfather and mother and grandmother, and also of one spouse for the other, is not admitted.

But except these, the evidence of relations is admissible on behalf of one another.

Likewise, the evidence of a man who subsists on the food of someone, and of a person employed privately for hire, is not admissible. But the evidence of fellow servants on behalf of one another is received.

Likewise, the evidence of partners for one another in respect of partnership property, and of a surety (*kefyl bil mal*, Art. 614),



for the payment of the thing, for which he was surety, by the principal are not admissible. But in other matters their evidence on behalf of one another is admissible.

Friend for a friend.

1701. The evidence of a friend for a friend is admissible. But if the friendship between them comes to the degree of their disposing of each other's property, it is not admissible.

There must not be enmity.

1702. It is a condition that there must not be enmity as regards temporal things between the witness and the person against whom evidence is given.

Enmity of a wordly nature is known by custom.

Plaintiff cannot be witness.

1703. A person cannot be both plaintiff and witness.

Therefore, the evidence of the guardian for the infant and of the agent for his principal is not good.

Person cannot give evidence of his own act.

1704. The evidence of a person for his own act is not held good.

Therefore, the evidence of agents and of auctioneers saying "We have made a sale," is of no effect.

Therefore, if the judge in a town, after he has retired from his office, give evidence for a judgment delivered by him before he left his office, it is not good. But if he gives evidence, after he has left his office, for an admission which took place before him prior to his leaving, it is good.

Witness must be a proper person.

1705. A witness must be a proper person.

Therefore, the evidence of persons who habitually act and behave in a way derogatory to their dignity and honour, like dancers and buffoons, and the evidence of a person known for his lying, is not admissible.

#### SECTION IV.

*Is about the evidence agreeing with the claim.*

Evidence must agree with claim.

1706. The giving of evidence, if it agrees with the claim, is accepted. If not, it cannot be accepted. But attention is not to be paid to the word. It is sufficient if there is an agreement in the meaning.

*For example.*—Where the subject-matter of the action is a thing, deposited for safe keeping, if the witnesses give evidence that the defendant has admitted the deposit, or,

When the subject-matter of the action is the wrongful taking and detention of property, if the witnesses give evidence that the defendant has admitted the wrongful taking and detention, it is admissible.



Likewise, when a debtor claims in Court that he has paid a debt, if the witnesses give evidence that the creditor has released the debtor, it is admissible.

1707. There is agreement of the evidence with the claim, whether it is in complete conformity with it, or the thing for which evidence is given is less than the thing claimed.

Evidence may be less than the claim.

*For example.*—When the plaintiff brings an action saying, "Since two years this property belongs to me," in case the witnesses also give evidence that it has been his property since two years, their evidence is admissible, and it is also accepted if they give evidence that it has been his property for one year.

Likewise, when the plaintiff claims 1,000 piastres, in case the witnesses have given evidence for 500 piastres, their evidence is accepted as regards the 500 piastres.

1708. When the witnesses give evidence for more than what is claimed, it is not accepted. Unless the difference between the claim and the evidence is really capable of explanation, and the plaintiff explains the relations between them. In that case the evidence is accepted.

When evidence for more than claim is acceptable.

*For example.*—When the plaintiff brings an action, saying, "This property is mine since two years," if the witnesses give evidence that it has been his since three years, it cannot be accepted.

Likewise when the plaintiff claims 500 piastres, if the witnesses give evidence that it is 1,000 piastres, it cannot be accepted.

But if plaintiff shew that the evidence agrees with the claim, saying, "At the time I had 1,000 piastres to receive from him, but I have been paid again 500 piastres and the witnesses did not know this," the evidence of the witnesses is received.

1709. When the plaintiff brings an action for ownership without stating how he obtained the property, saying, for example, "This vineyard is my property," if the witnesses give evidence for an ownership of which they state the origin, saying, "The plaintiff bought this vineyard from such a one," it is accepted.

Claim mulk-i-mutlaq evidence mulk bi sebeben.

Thus if the witnesses have given evidence for an ownership limited by stating the origin in that way, the judge asks the plaintiff, saying, "Do you claim the property as arising from this cause or from another cause."

And if the plaintiff says, "Yes! I claim it to be mine from this cause," the judge accepts the evidence of those witnesses. But if he says, "I claim from another cause," or, "I do not make my claim



Claim mulk  
bi sebeben  
evidence  
mulk-i-  
mutlaq.

based on that cause," the judge rejects the evidence of those witnesses.

1710. If the plaintiff has brought his action claiming an ownership limited by a cause, in a vineyard for example, it is considered.

If he says without mentioning the seller "I bought," or, If leaving it doubtful he says, "I bought from someone."

If the witnesses give evidence, for an ownership without any cause, saying, "this garden is his property," by reason of it being in effect an action for ownership not restricted by stating the cause, the evidence is accepted. But, if he says, "I bought from such a man" and describes the seller, if the witnesses give evidence of an ownership without the origin being stated, it cannot be received.

Because, if an ownership based on no grounds is proved, it being proved to have come into existence from the first, it applies necessarily to the increase, for example, the plaintiff being owner of the fruit which has been produced before from a vineyard.

If ownership based on a cause is proved, it is only proved as taking place from the date of its cause, e.g., the date of its sale and purchase.

In this way ownership without cause assigned being greater than ownership with cause assigned, the witnesses have given evidence for the greater thing.

Evidence  
contrary to  
claim as  
regards  
cause of  
debt.

1711. Evidence, if it is contrary to the claim, as regards the cause of a debt, is not received.

*For example.*—When the plaintiff claims 1,000 piastres to be due to him as the price of a thing sold, and the witnesses give evidence that the defendant owed a debt of that amount arising by way of loan, it is not admissible.

Likewise, if the plaintiff brings an action saying, "this property passed to me as inheritance from my father," and the witnesses give evidence that he inherited it from his mother, it is not admissible.

## SECTION V.

*Is about contradictions of witnesses.*

Contradic-  
tory  
witnesses.

1712. If witnesses make contradictions in respect of the subject-matter of the evidence, their evidence is not admissible.

*For example.*—If witnesses give evidence, and one of them says 1,000 piastres worth of gold, and the other 1,000 piastres



worth of silver coins, their evidence is not received.

1713. If the differences of witnesses in respect of a thing, which depends on the subject-matter of the evidence, cause a difference in respect of the subject-matter of the evidence, this evidence is not received. And if it does not cause such a difference, it is received.

Differences  
of witnesses.

Therefore, in respect of matters which are considered mere acts, like a wrongful taking of property, or the payment of a debt, if one of the witnesses give evidence of the act at one fixed time, or a certain place, and another witness gives evidence of the thing being done at another time or at another place, because these differences cause a difference in the subject-matter of the action, their evidence is not accepted.

But in matters which are of the class which arise from words, like, sale and purchase, letting, suretyship, hawale, gift, pledge, debt, loan, release, and making a will, because the differences of witnesses as to time and place do not cause a difference in the subject-matter of the evidence, there is no impediment to the receipt of their evidence.

*For example.*—When someone makes a claim that he has paid his debt, and one of the witnesses gives evidence that he had paid it in his house, and another gives evidence that he had paid it in his shop, their evidence is not received.

But when someone has made a claim before the Court for property which is in the hands of another, saying, "You have sold this property to me for so many piastres, give it to me," and one of the witnesses gives evidence that it was sold in such a house and the other that it was sold in such a shop, their evidence is received. Because an act cannot come again and be repeated, but a word can come again and be repeated.

1714. If the witnesses make contradictions as to the colour of property which has been wrongfully taken, or as to its being male or female, their evidence is not accepted.

As to colour  
or sex.

*For example.*—In the case of a horse which has been wrongfully taken if one of the witnesses gives evidence and says that it is a grey horse, and another says it is a dark brown horse, or a chestnut horse, or one says it is a horse, and other says it is a mare, their evidence is not received.

1715. In an action about a contract, if the witnesses make a contradiction as to the amount of the price, their evidence is not accepted.

As to price.



*For example.*—If one of the witnesses, who give evidence of a thing having being sold, says it was 500 piastres and the other says it was 300 piastres their evidence is not accepted.

## SECTION VI.

*Is about an enquiry into the credibility of witnesses.*

Public and  
private  
examination.

1716. When witnesses give evidence the judge asks the defendant and says, "What do you say about these witnesses, are they truthful or not." And if the defendant says "the witnesses as regards their evidence are truthful", or "as regards their evidence they are competent" he is considered to have admitted the subject-matter of the action, and judgment is given by the admission. And if he says, "These give false evidence," or, "These men are competent, but in this matter they make a mistake," or, "they have forgotten the matter," or, if he denies the subject-matter of the action at the same time saying, "These men are competent," the judge does not give judgment, he ascertains whether the witnesses are or are not competent by examining as to their credibility, publicly and privately.

From whom  
made.

1717. The examination of the credibility of the witnesses is made, whether publicly or privately, from the people with whom they have been connected, that is to say, if they are pupils, from trustworthy inhabitants and the master of the school where they have lived, and, if they are soldiers, from the officers and clerks of their battalion, and if he is a clerk from his superiors and fellow clerks in his office, and if he is a merchant from trustworthy merchants, and if he belongs to an incorporated trade from the warden of the trade and the masters in committee, and if he belongs to other trades from trustworthy inhabitants of the quarter or village.

Secret  
enquiry how  
made  
mestureh.

1718. The secret enquiry is called in legal technical language mestureh. It is conducted by writing.

The judge puts in that writing the names of the plaintiff and the defendant and the subject-matter of the action, and the names and generally known names of the witnesses and their trade and conditions, and the places where they live, and the names of their fathers and grandfathers, or if they are well known, only their names, and generally known names, and finally he describes the witnesses so that they will be known from other persons.

And after he has placed it in an envelope and sealed it, he



sends it to those who are chosen to ascertain the characters of the witnesses.

And the persons chosen when they have opened and read the "mestureh," if the witnesses whose names are written inside are competent, write under the names that they are competent and admissible as regards the evidence, and, if they are not competent, they write saying, "They are not competent" and sign it, and return it to the judge, putting a seal on the envelope, without making known what is written to the person, who brings the envelope, or other persons.

1719. When it has not been written on the mestureh by the persons chosen to make the enquiry, saying, as regards the witness that they are competent and admissible for the evidence, and something has been written which expressly or impliedly represents the contrary, such as, "not competent," or, "we don't know their condition," or, "their conditions is unknown," or, "God knows," or, if it is returned to the judge sealed without anything being written, the judge does not receive the evidence of those witnesses.

Procedure  
after private  
enquiry.

In this case it is not said by the judge to the plaintiff, "Your witnesses are incompetent," it is only said "If there are other witnesses bring them."

And if it has been written in the mestureh that the witnesses are competent and admissible for the evidence, they proceed in the second place to the open enquiry as to the credibility of the witnesses.

1720. The open enquiry as to the credibility of the witnesses is conducted in this way.

Public  
enquiry, how  
held.

The persons, who were appointed to make the enquiry, are summoned before the judge, and when the two parties are present, the enquiry is made, or,

When the litigants have come together, the witnesses accompanied by the representative of the judge for making the enquiry, are sent to the persons appointed to make the enquiry, and the enquiry takes place openly where they are.

1721. In a secret enquiry it is sufficient that there is one person appointed to enquire into the character of the witness, yet, for consideration of prudence there must be two at least.

Secret  
enquiry,  
two should  
enquire.



Public enquiry rules of evidence apply.

1722. An open enquiry being a kind of evidence (shehadet) for it the rules and amount of evidence (shehadet) are observed, except that it is not necessary for the persons appointed to make the enquiry to say the word "shehadet".

Second enquiry not necessary for six months.

1723. When the competency of witnesses has in the opinion of the judge been proved in one matter, when he has given evidence in another matter before that judge, if six months have not passed between, the judge does not occupy himself with inquiring again into their credibility. And if six months have passed, the judge inquires into it again.

Objection by defendant to witness.

1724. If before the enquiry into the credibility of the witnesses or after, the person against whom the evidence is given makes an objection to the acceptance of the witness, such as, "he will be released from an obligation," or, "he will obtain benefit" or if he imputes anything to the witnesses and finds fault with them, the judge demands proof from him. And in case the person, against whom evidence is given, has proved this by evidence, the judge rejects the evidence of that witness. And in case he has not proved it, the judge, if the witnesses have not had their credibility enquired into, holds an enquiry into their credibility, and if there has been an enquiry, he gives judgment according to their evidence.

Good report must be unanimous.

1725. If some of the persons, appointed to enquire into the credibility of a witness, make a damaging report, and others report that he is worthy of credit, the judge prefers the damaging report and does not give judgment on the evidence of those witnesses.

Enquiry after death of witness.

1726. In civil matters, if the witnesses after they have given evidence, die or go away, the judge can enquire into their credibility, and give judgment on their evidence.

## APPENDIX

### *Is about administering an oath to a witness.*

Swearing witness.

1727. In case the person against whom evidence is given, before judgment, asks the judge, saying, "Administer the oath to the witnesses that they have not told untruths in their evidence," and it has become necessary to strengthen the evidence by oath, the judge can administer the oath to those witnesses.

And the judge can say to the witnesses "I will accept your evidence, if you swear to its truth, if not, I will not accept it."



## SECTION VII.

*Is about witnesses going back from their evidence.*

1728. If witnesses, after giving evidence and before judgment, in the presence of the judge, go back from their evidence, their evidence is as though it had not been given, and the witnesses are reprimanded.

Before judgment.

1729. If the witnesses, after the judgment, go back from their evidence in the presence of the judge, the judgment of the judge is not destroyed. The witness can be made to make compensation for the thing adjudged. (See Art. 80.)

After judgment.

1730. When some of the witnesses go back from their evidence in the way above-mentioned, if the rest complete the amount of evidence required by law, compensation is not necessary. But they are reprimanded. And if the remainder do not complete the necessary amount of evidence required by law, compensation can be recovered, if there is one person who goes back from his evidence from him entirely, and if there are more than one, from them jointly in equal shares.

Some witnesses retracting.

1731. It is a condition of the retraction of evidence that it be made in the presence of the judge. No attention is paid to a retraction made elsewhere.

Retraction must be before judge.

Therefore, if the person against whom evidence is given make a claim that the witnesses have retracted their evidence in another place, it is not heard.

And after a witness has given evidence in the presence of one judge, if he goes back from his evidence in the presence of another judge, his retraction has effect.

## SECTION VIII.

*Is about tevatur (Art. 1677).*

1732. No weight is given to the great number of the witnesses. That is to say, by reason of one of two parties having more witnesses than the other party, it is not necessary that it should be preferred; unless the number of witnesses amounts to the degree of tevatur (Art. 1677).

As to number of witnesses.

1733. *Tevatur* (Art. 1677) represents positive knowledge. Therefore, evidence cannot be produced contrary to *tevatur* (Art. 1677).

Evidence not received contrary to.

1734. In *tevatur* (Art. 1677) there is no necessity for the word *shehadet* (Art. 1684), and competency is not enquired into,

Rules as to.



Therefore, there is no necessity for enquiry into the credibility of the person giving the information (mukhbir).

Must be a great many witnesses.

1735. In tevatur (Art. 1677), there is no fixed number for the people who give information. But it is necessary that there must be a great number, so many that reason will not permit their having joined together to tell a lie.

## CHAPTER II.

*Is about proofs in writing, and final presumptions, and is divided into two sections.*

### SECTION I.

*Is about proofs in writing.*

Evidence, effect of.

1736. On writing and seal alone action is not taken.

But if it is free from suspicion of fraud and forgery, it becomes a ground on which action is taken, *i.e.*, that on which a judgment turns. There is no need for evidence in any other way.

Sultan's Berat Land Registers.

1737. The Sultan's berat, and the registration in the Imperial land registries, by reason of their being secure from fraud, are acted upon.

Court Books.

1738. As will be explained in the book about judges, the books kept by the Courts in such a way as to be free from malpractice and fraud are also acted upon.

Vaqfieh registered in a Court.

1739. On a vaqfieh alone action is not taken. But in case it has been registered in the books of a Court, which are to be relied upon and trusted, it is acted upon.

### SECTION II.

*Is about complete presumptive proof.*

A ground of judgment.

1740. One of the grounds of judgment also is complete presumptive proof.

Complete presumptive proof.

1741. A complete presumptive proof is an inference which attains the degree of positive knowledge.

*For example.*—On someone's going into an empty house, immediately after a man has come from the house with fear and haste, and with a bloodstained knife in his hand, if there is seen a person with his throat recently cut, there is no doubt that that man is the murderer of the person.

No attention is paid to the mere possible chance that that person perhaps killed himself. (See Art. 74).



## CHAPTER III.

*Is about administering the oath to one of the parties.*

*(See Arts. 1818—1820.)*

1742. One of the grounds of judgment also is the oath or the refusal of the oath.

Oath when administered.

Thus, in case the plaintiff is unable to show his claim by proof, on his demand the oath is administered to the defendant.

But when a person makes a claim from another, saying, "You are the vekyl of such a one," it is not necessary that the oath be administered to him.

Likewise, when each of two persons claims from someone property which is in his hands, saying, "I bought it," and that person admits that he sold it to one, and denies the claim of the other, the oath is not administered to him.

In this matter, hiring and the receiving of a pledge or a gift are like purchase.

1743. When the oath is about to be administered to one of the two litigants the oath is taken in the name of God the highest, saying "wa 'llahe" or "bi llahi".

Form of oath.

1744. The oath is taken only in the presence of the judge or his representative. The refusal of the oath in the presence of another person is not considered.

Before whom administered.

1745. For the administration of an oath a substitute is permissible, but for taking an oath a substitute is not allowed.

As to substitute.

Therefore, vekyls for the action can administer an oath to one of the parties, but when the oath is administered to his principal, it is necessary that he takes the oath in person, it cannot be administered to his vekyl.

1746. The oath is only administered on the application of a party. But in four instances the oath is administered by the judge without an application.

Oath when administered.

*Firstly.*—When someone has claimed and proved a right against the estate of a deceased person, the judge administers an oath to the plaintiff, that he has not had this right satisfied in any way by the dead man, or got anyone else to have it satisfied, and that he has not given a release of it, and that he has not made a hawale imposing it on someone else, and that he has not been paid by any other person, and that he has not taken a pledge from the dead man as security for this right.

This oath is called "Istizhar."



*Secondly.*—When a person turns up having a right to property, and has made his claim and proved it, an oath is administered by the judge that he has not sold, or given that property, or, finally that it has not passed from his ownership in any way.

*Thirdly.*—When a purchaser has been going to return a thing which he has brought on the ground of defect, an oath is administered to him by the judge that after he discovered the defect, he did not by word, or, impliedly by any disposition of it as if it were his own property (as is explained in Art. 344), assent to the defect in the thing.

*Fourthly.*—When a judgment is going to be given by a judge, for a right of pre-emption, an oath is administered to the person claiming it that he has not made void his claim, *i.e.*, that he has not destroyed his right of pre-emption.

Must be administered by judge.

1747. If upon the demand of his opponent immediately, without the oath being offered by the judge, the defendant takes the oath, it is not considered good. The oath must be administered by the judge again.

When affirmative, when to best of knowledge.

1748. When someone is going to take an oath about his own act, the oath is made categorically, *i.e.*, the oath is caused to be taken finally, saying, "This thing is so," or, "it is not."

But when a person is going to take an oath about the act of someone else, the oath is taken that he has no knowledge, *i.e.*, the oath is caused to be taken that he has not known that thing.

Oath as to cause or effect.

1749. The oath is either for the cause, or, for what is produced by it.

Therefore, the taking of an oath that a matter has or has not taken place is an oath for the cause, and to take an oath as to a matter still remaining, is an oath to the effect.

*For example.*—In an action on a sale, to swear that the sale never took place at all, is an oath to the cause, but to swear as to whether the contract does or does not still exist is an oath to the effect.

One oath for several claims.

1750. When different claims are brought together, one oath is enough, it is not necessary that an oath should be taken in each one separately.

Effect of refusal to take oath.

1751. In civil actions, when the oath is proposed to a person who is bound to take the oath, and he refuses the oath, either expressly, saying, "I do not swear," or impliedly by keeping silence without excuse, the judge gives judgment based on his refusal.



And if after the judgment he is going to take the oath, no attention is paid to him. The judgment of the judge remains as it is.

1752. The oath of a dumb man and his refusal of an oath, by his signs which are well known, are held good. Dumb.

#### APPENDIX

1753. After the plaintiff has said "I have no witness," if he is going to call a witness, or, if, after he has said "I have such a witness and no other," he says "I have another witness," he is not accepted.

Plaintiff cannot call witness after saying he has none.

#### CHAPTER IV.

*Is about the preference of proof, and administering the oath to both parties. It contains four sections.*

##### SECTION I.

*About litigation for possession.*

1754. When immovable property is in dispute it is necessary to prove by evidence the possession (ziliyet, See Art. 1679), of it. By the affirmation of the two parties, *i.e.*, by the admission of the defendant, upon the claim made by the plaintiff, judgment is not given that the defendant is the possessor. (ziliyet, Art. 1679).

How proved.

But if the plaintiff has brought his action, saying, "I bought that property from you," or, "You wrongfully took it from me," there is no need for proof by evidence (beyyine) of the defendants being possessor (ziliyet).

Moreover, if movable property is in the hands of anyone, he is the possessor (ziliyet, Art. 1679).

There is no need for proof by evidence (beyyine) in the way stated above. And as to this the statement of the two parties is enough.

1755. When two people are disputing about immovable property, and each of them says that he is possessor (ziliyet, Art. 1679), of that property, first evidence (beyyine) is required from them as to which of them is possessor (ziliyet, Art. 1679).

And if both have produced evidence (beyyine) at the same time, in support of their being possessors (ziliyet, Art. 1679), it is proved that the two of them are jointly in possession (Art. 1679).

And if one is unable to shew by proof that he is a possessor (ziliyet, Art. 1679), and the other gives evidence (beyyine) in support of his being possessor (ziliyet), judgment is given in favour of



his being possessor (Art. 1679), the one first mentioned is counted as not being connected with it.

And if neither of the two parties proves that he is possessor (ziliat), the oath is administered to each, on the demand of the other, that his opponent is not possessor (ziliat) of that immovable property. And if both of them refuse to take the oath, it is proved that they are possessors (ziliat) of that property jointly.

And if one refuses to take the oath and the other takes the oath, judgment is given that the person taking the oath is the sole possessor (ziliat, Art. 1679), of that property, the other is counted as outside.

And if both take the oath, judgment is given that neither of them is possessor (Art. 1679), the immovable property, which is the subject-matter of the action, is kept until the truth of the circumstances is made clear.

## SECTION II.

*Is about the preferring of proofs. (See Art. 1769).*

Claim of  
sole and  
joint owner-  
ship.

1756. When two persons while they jointly hold (tassaruf) a property, *i.e.*, while both are possessors (ziliat), bring an action about that property and one says "It is my sole property," and the other says "I own it in common with him," the evidence (beyyine) of sole ownership is preferred.

That is to say, if the two parties are going to give evidence in support of their claim, the evidence of the person who claims absolute ownership, is preferred to the evidence of the person who claims joint ownership.

And if the two claim to be sole owners, and prove it (beyyine), judgment is given that that property is owned by them in common.

And if one is unable to prove it, and the other proves his claim, judgment is given that that property belongs to him absolutely.

Claim of  
mutlaq-i-  
mulk, not  
stating date.

1757. In a claim for ownership not based on any ground (Art. 1078), and not stating the date, the evidence of the person not in possession is preferred.

*For example.*—When someone has brought an action for a house which is in the hands of another saying, "This house is my property, this man holds it without right. It is my wish that it should be taken from him and given to me" and the person in possession makes a claim, saying, "This house is my property, therefore, I hold it by right," the evidence of the person not in possession is preferred and heard.



1758. Actions for ownership, when the date is not declared, and the ownership is restricted to a ground which is capable of repetition, like purchase, are like an action for ownership without a cause (Art. 1078), in these also the evidence of the person out of possession is preferred to the evidence of the person in possession.

Action for ownership with a cause like purchase, date not declared.

But in case they both claim that their ownership has depended on one person, the evidence of the person in possession is preferred.

*For example.*—When someone brings an action claiming a shop which is in the possession of another, saying, "I bought this shop from Veli Agha, and while I was owner for this reason, this man without right laid hands on it". And the person in possession (ziliet), makes a claim before the Court, saying, "I bought it from Bekir Effendi," or, "It was inherited from my father and on this ground I possess it," the evidence of the person not in possession is preferred and heard.

But if the possessor (ziliet) says, "I bought this shop from Veli Agha," in that case his evidence is preferred to the evidence of the person not in possession.

1759. In a claim for ownership restricted to a cause, which is not capable of repetition, like an animal having given birth, the evidence of the person in possession is preferred.

Claim of ownership for cause like birth.

Therefore, when a person out of possession and a person in possession dispute about a colt and each of them claims in Court that that colt is his property born from his own mare, the evidence of the person in possession is preferred.

1760. In an action for ownership which is dated, the evidence of the one who is first in date is preferred.

First in date preferred.

*For example.*—When someone brings an action for a building site in the hands of another, saying, "I bought this building site a year ago from such a person," and the person in possession says, "This building site came to me as inheritance from my father who died five years ago," the evidence of the person in possession is preferred. And if he said "I inherited it from my father who died six months ago" in that case the evidence of the person not in possession is preferred.

Likewise, if each of the litigants claim that they have bought the subject-matter of the action from different people, and they declare the date of the ownership of the persons who sold to both of them, the evidence of that person is preferred, the seller of whom had the earlier ownership.



1761. In a claim about an animal having given birth, no attention is paid to the date, the evidence of the person in possession is preferred as stated above.

Only if the age of the subject in dispute does not agree with the date given by the person in possession, if it does agree with the date given by the person out of possession, the evidence of the person out of possession is preferred.

And if its age is contrary to the two of them, or if it is not known, the evidence of both is destroyed, and the subject-matter of the action remains in the hands of the person in possession.

1762. The evidence of the greater is preferred.

Evidence of the greater.

*For example.*—When the seller and buyer differ as to the amount of the price of a thing sold, the evidence of the claim for the greater is preferred.

Evidence of ownership and loan for use.

1763. The evidence for ownership is preferred to evidence for a loan for use.

*For example.*—When someone has demanded to take back property which is in the hands of another, saying, "I gave it him as a loan for use," and the other says, "You sold that property to me," or, "You gave it to me," the evidence of the sale or gift is preferred.

Sale, gift, pledge, etc.

1764. The evidence of sale is preferred to the evidence of gift or pledge or letting, and the evidence of letting to the evidence of pledge.

*For example.*—When one person makes a claim upon another person, saying, "I sold you such a property, pay me the price," and the other person makes a claim, saying, "You gave and delivered it to me," the evidence of sale is preferred.

Loan for use.

1765. In loan for use, the evidence in favour of a general loan is preferred.

*For example.*—When a horse, lent for use, perishes, in the hands of the person to whom it is lent, and the person who lent the horse, brings a claim in Court that that person is responsible for its value, saying, "I lent you the horse to use for four days. It was not delivered to me at the expiration of the four days and perished on the fifth day," and the person to whom the horse was lent make a claim, saying, "You did not limit it so, saying, until four days, you lent that horse to me to use generally," the evidence of the person to whom the horse was lent is preferred and heard.



1766. The evidence of health is preferred to the evidence of mortal sickness.

Health and sickness.

*For example.*—When a person has made a gift to one of his heirs and has died, if another heir claims that the gift was made at a time of mortal sickness, and the person in whose favour the gift was made claims that it was made while he was in a state of health, the evidence of the person in whose favour the gift was made is preferred.

1767. Evidence of sound mind is preferred to evidence of madness or imbecility.

Madness and sanity.

1768. Where there is together evidence of immemorial existence and recent creation, the evidence of recent creation is preferred.

Immemorial existence and recent creation.

*For example.*—When one man's water channel is on another man's mulk land, and there arises a difference between them as to whether it is recent or of time immemorial. And the owner of the house claims that it is of recent origin and demands its removal, and the owner of the channel claims it is of time immemorial, the evidence of the owner of the house is preferred.

1769. In case the person preferred is unable to prove his case by the production of evidence, evidence is asked for from the party over whom the preference was given. If he proves his case, it is well. If he has not proved it, the oath is administered to him.

Procedure, when person preferred fails to prove his case.

1770. When, by reason of the person preferred being unable to prove his case by the production of evidence as above stated, the person, over whom the preference was given, has produced evidence, and judgment has been given upon it, if afterwards the person preferred wishes to produce evidence, attention is no longer paid to him.

Person preferred cannot afterwards produce proofs.

### SECTION III.

*Is about who has the making of a statement, and judgment by the existing state.*

1771. In case a husband and wife have a dispute about things which are in a house they have dwelt in, it is considered.

Husband and wife.

If it is about things which are fit for the husband only, like a gun or a sword, or if it is about things which are fit for the two of them, like kitchen, utensils and furniture, the proof (beyyine) of the wife is preferred.



And in case as regards both of them, they have been unable to bring proof, it is for the husband to make the statement on oath, i.e., if he swears that they do not belong to his wife, judgment is given that they belong to him. But if it is about things, like clothes or jewels, which are suitable only for a woman, the proof (beyyine) of the husband is preferred. And in case as regards both of them they are unable to bring proof, the statement on oath is for the wife.

If however, one is a manufacturer or seller of things suitable for the other, in every case the statement on oath is for the former.

*For example.*—An ear-ring being a jewel specially for women, if the husband is a jeweller, the statement on oath is for him.

Heir of husband or wife.

1772. On the death of one spouse, the heir stands in the place of the person from whom he inherits. But in case both parties, as above stated, are unable to produce evidence as regards things which were suitable for the two spouses, the statement on oath is for the surviving spouse. And in case both have died at the same time, as regards things which are suitable for them both, the statement on oath is for the heirs of the husband.

Donor and donee.

1773. When the donor wishes to go back from his gift, and the donee makes a claim in Court that the thing given has been destroyed. A statement not on oath is to be made by the donee.

Bailor and bailee.

1774. A person, who is entrusted, as regards his being free from indebtedness, makes confirmation on oath.

For instance, when a person, who has given another his property to keep, brings a claim in Court against the person with whom he deposited it, and the person, with whom he deposited it, says, "I returned it to you," it is for the person with whom the thing was deposited to make the statement on oath. But if, he is going to call evidence in order that he may be released from the oath, his evidence is heard.

Creditor, payment to.

1775. If, after a person, who has various debts, has given a quantity of things to his creditor, there is a question raised in Court on account of what debt the payment was made, the statement is for him.

Lessor and lessee.

1776. If after the expiration of the time of the hiring of a mill, the lessee, in consequence of the cutting off of the water during a period of the hiring, wishes to deduct the share of the rent for that time, and a difference takes place between him and the lessor, and there is no evidence, it is considered.



If their difference is as to the length of time that the water was cut off, *e.g.*, if the lessee claims that it was ten days and the lessor five days only, it is for the lessee to make the statement on oath, and,

If their difference is as to the water having been cut off at all, *i.e.*, if the lessor totally denies that the water was cut off, the present state is made the judge, *i.e.*, judgment is given, so that, if the water is running at the time of the claim in Court and the litigation, it is for the lessor to make a statement on oath. And if, at that time, it is cut off, it is for the lessee to make a statement on oath.

1777. When there is a dispute as to whether a water channel flowing to someone's house is new or old, and the owner of the house wishes to remove it, and claims that the bed of the channel is new, and there is no evidence on either side, it is considered.

As to  
channel  
being old or  
new.

If at the time of the litigation there is water flowing from the bed of that channel, or if it is known that it flowed before, it is kept in that state. And it is for the owner of the channel to make a statement on oath, *i.e.*, he is made to swear that the bed of the channel is not recent.

And if at the time of the litigation the water is not running and it is not known that it ran from it before, the statement on oath is for the owner of the house.

#### SECTION IV.

##### *Is about administering the oath to both parties.*

1778. When there is a difference between the seller and the buyer as to the amount, or description or kind of the price, or the thing sold, or of both, whichever produces evidence, judgment is given for him, and if both of them produce evidence, judgment is given for him who proves the more.

Seller and  
buyer.

But if both of them are unable to give proof, it is said to them "either one consents to the claim of the other or we make the sale void". And if upon this, one of them does not agree to the claim of the other, the judge administers an oath to each of them about the claim of the other. And first he begins with the purchaser. And if either of them refuse the oath, the claim of the other is proved, and if both take the oath, the judge declares that sale void.

1779. When the person who hires a thing has a dispute with the letter, before taking possession of a thing being recently let, *e.g.*, when the hirer makes a claim in Court, saying, "the rent

Letter and  
hirer before  
entry.



is ten gold pieces," and the letter says, "it is fifteen gold pieces," whichever of them produces evidence, it is accepted.

And if the two produce evidence together, judgment is given by the evidence of the letter. And if both are unable to prove their claim, the oath is administered to both, and they begin by administering the oath to the hirer, and whichever of them refuses, it is judged by his refusal.

And if they two take the oath, the judge declares the contract of hire void.

And in case they have had a difference about the time, or distance, of the hiring, judgment is given in this way.

Provided that, when the two have produced evidence, judgment is given by the evidence of the hirer, and in case the oath is administered to both, they begin by administering the oath to the letter.

Letter and  
hirer after  
expiration of  
letting.

1780. If the letter and hirer have differences, such as are mentioned in the last article, after the expiration of the term of the letting, the oath is not administered to both. It is for the hirer to make a statement on oath.

Letter and  
hirer during  
letting.

1781. If the letter and hirer have differences about the amount of the rent, during the time of the lease, the administration of the oath to both follows, and as regards the remainder of the time, the contract of letting is made void.

And as regards the share of rent for the time past, the statement is for the hirer.

Buyer and  
seller, when  
thing cannot  
be returned.

1782. If the buyer and seller have a dispute after the thing sold has been destroyed in the hands of the buyer, or there has been a recent defect which prevents its return, the oath is not administered to both parties, only the purchaser is made to take the oath.

Action about  
a condition,  
or payment.

1783. In an action about delay, *i.e.*, whether there is or is not a delay, and as regards a stipulation for an option, and as to whether the full price or part of it has been received, the oath is not administered to both. In these three cases the oath is administered to the person who denies.

Imperial Irade,  
26th Sha'ban, 1293.



## BOOK XVI.

*Is about judgments and the functions of a judge. It contains a preface and four chapters.*

4, Destour,  
115.

## THE PREFACE.

*Explains some technical terms of the Sher' Law.*

1784. "Qaza" means judgment and the functions of a judge.

Qaza.

1785. "Hakim" is a person appointed by the Sultan to decide and determine in accordance with the Sher' Law, the actions and litigations which arise between people.

Hakim.

1786. "Hukm" is a judge's making an end of a dispute.

Hukm.

And this is of two kinds :

The first kind is the judge's giving judgment, *i.e.*, making the doing of the thing adjudged necessary for the person against whom judgment is given, in words such as "I have given judgment, give the thing which is claimed."

Qaza-i-  
ilzam.

Qaza-i-  
Istihqaq.

The name "Qaza-i-ilzam" and Qaza-i-Istihqaq is given to this.

The second sort is the judge's preventing the plaintiff from disputing, with such words as "You have no right, you are forbidden to dispute."

Qaza-i-terk.

To this the name Qaza-i-terk is given.

1787. "Mahhkum bih" is the thing adjudged by the judge against the person against whom judgment is given. In qaza-i-ilzam it is the doing of that to which the plaintiff is entitled, in qaza-i-terk it is the plaintiff's giving up to dispute.

Mahhkum  
bih.

1788. "Mahhkum aley-h" is the person against whom judgment is given.

Mahhkum  
aley-h.

1789. "Mahhkum leh" is the person in whose favour judgment is given.

Mahhkum  
leh.

1790. "Tahkim" consists of two litigating parties employing another person as judge by the consent of both, to decide their litigation and claims in Court.

Tahkim.

That person is called hakem and muhakim.

Hakem.  
Muhakim.

1791. "Vekyl Musakhar" is a vekyl appointed by a judge for a defendant who cannot be brought into Court.

Vekyl  
musakhar.



## CHAPTER I.

*Is about judges and is divided into four sections.*

### SECTION I.

*Explains the attributes of a judge.*

Attributes  
of a judge.

1792. A judge must be a man of understanding, upright, and trustworthy, patient and firm.

1793. A judge must know the precepts of the Sher' Law (Fiq-h) and the procedure for trials, and must be able to decide lawsuits, which arise by the application of them.

1794. It is necessary that the judge be able to distinguish fully.

Therefore, it is not lawful for a man to be judge who is an infant, an imbecile, blind or so deaf that he cannot hear the strong voices of the parties.

### SECTION II.

*Is about the manners of a judge.*

Conduct of  
judge.

1795. The judge must abstain from all actions and deeds which will destroy the Majesty of the Court, like buying and selling and joking during the sitting of the Court.

1796. The judge must not accept a present from either of the two parties.

1797. The judge must not go to a feast given by either of the litigating parties.

1798. A judge during a trial must not be found in actions or circumstances which will cause bad suspicions of wrong-doing, like receiving one only of the parties in his house, or retirement with one of them at the meeting for giving judgment, or making signs to one of them with the hand or the eye or the head, or speaking secretly to one of them, or speaking in a language unknown to the other.

1799. A judge is an officer for justice between the parties.

Therefore, if one of the parties is of a people however, noble, and the other from common people, it is necessary that he makes both parties sit down at the time of the trial, and observe perfect equality and justice in the transactions connected with the trial, such as indicating or referring to or speaking to them.



## SECTION III.

*Is concerning the duties of the judge.*

1800. The judge is a vekyl on behalf of the Sultan to conduct actions and give judgments.

Duties of judge.

1801. A judge is limited by time and place and by the exception of some matters.

Jurisdiction limited.

*For example.*—A judge being appointed to judge for one year only, gives judgment for that year alone. Before that year arrives, or after its expiration, he cannot give judgment.

By term of appointment.

Again a judge appointed to adjudge cases in a well known District, gives judgment in every part of that District, but in another District he cannot give judgment.

By locality.

And a judge appointed to give judgment in a well known Court, adjudges cases in that Court only, he cannot judge cases in another place.

And again, if an order has come from the Sultan, saying, that an action dependent on a certain matter, based on a proper consideration of the public advantage, is not to be heard, the judge cannot hear and judge that action.

By prohibition.

Or, when a judge is authorised to hear certain fixed matters in a Court, and if he is not authorised to hear others, that judge only hears and judges those matters for which he has authority, he cannot hear and judge the others.

By nature of case.

And again, if an order has come from the Sultan, that as regards some special matter the opinion of one of the founders of the Law should be acted on, on the ground that it is more convenient for the business of the time and for people, in that matter the judge cannot act by the opinion of another founder of the Law and contrary to the opinion of that one. If he does, his judgment is not nafiz (Art. 113).

As to Law to be applied.

1802. When two persons are appointed to hear and determine an action together, one alone cannot hear and determine that claim. If he does, the judgment is not nafiz (Art. 113). (See Art. 1465).

Where two judges appointed to hear.

1803. In a city where there are several judges, if one of the litigants desires an action to be heard before one judge, and the other litigant in the presence of a different judge, and so a difference arises between them, the judge chosen by the defendant is preferred.

Defendant has choice of judges.



Judgment  
given be-  
fore dismis-  
sal known.

1804. If a judge who has been dismissed, but, by reason of the news of his dismissal not having reached him, has tried and determined some actions, it is good.

But the judgment given after the news of his dismissal has reached him, is not good.

Power to  
appoint re-  
presentative.

1805. If a judge has authority to appoint and dismiss a representative he can appoint another person to act for himself and can dismiss him. If not, he cannot. And on his being superseded or his death, his representative is not dismissed. (See Art. 1466).

Therefore, when the judge of a District dies, until another judge shall arrive in his place, the representative of the deceased judge can hear and determine the actions which arise in that District.

Judge or re-  
presentative  
can decide  
on evidence  
taken before  
the other.

1806. A judge can decide himself on evidence heard by his representative, and his representative can decide on evidence heard by the judge.

So that, if the judge has heard the evidence in an action and has informed his representative what it is, his representative, without calling back the evidence, can give judgment on what he has been told by the judge.

And if a representative of the judge, authorised to give judgment, hears the evidence in a matter and reports it to the judge, the judge, without calling back the evidence, can give judgment on the report of his representative.

But a judge cannot give judgment on the report of a person, who is authorised to hear evidence for the purpose of enquiring into a matter only, and who has no authority to give judgment. The judge must hear the evidence personally.

Action about  
land in an-  
other  
District.

1807. The judge of one District can hear claims about land in another District. But it is necessary that its legal boundaries should be set out in the manner explained in the book about actions.

Cannot give  
judgment for  
relation, etc.

1808. It is a condition that the judge's ancestor, and descendant or wife, and his partner in property in respect of which judgment is given, and his private servant, and the man who lives on his food, is not to be the person in whose favour he gives judgment.

Therefore, a judge after hearing the action of one of these cannot give judgment for him.



1809. If there is a law suit between one of the inhabitants of a town and the judge of that town, or, a person connected with him in the way mentioned in the above article, if there is another judge in that town, it is heard before him.

Where judge or person connected with him is a party.

And if there is no other judge in that town, the litigation is taken before an arbitrator appointed by consent of the parties, or before a representative of the judge appointed by him, if he has power to appoint a representative, or before the judge of some other District in the neighbourhood.

And in case the parties do not consent to one of these ways, they apply for a special judge on behalf of the Sultan.

1810. In hearing actions it is necessary for the judge to follow the rules "The first comes first."

Order of hearing.

But when an application is made to bring forward an action which comes later and it is seen to be advantageous, the hearing of the action is brought forward.

1811. It is permissible for the judge to ask someone else for a legal opinion (fetva) in case of need.

May obtain fetva.

1812. A judge must not enter upon a judgment when his mind is confused by misfortune which will prevent sound thinking, like sorrow, grief, hunger and excessive sleepiness.

Must be able to think.

1813. A judge, together with making minute enquiries, must not leave the case in delay.

Not to delay.

1814. The Judge places a register of the proceeding in the Court, and gives care and attention to binding and writing in that register in a regular way, which will be free from fraud and defect, the judgments and titles he has given.

To keep records.

And when his discharge has taken place, he makes over and delivers the records, either in person, or by a trusted agent, to the judge who succeeds him.

#### SECTION IV.

##### *Is about the manner of trial.*

1815. The judge conducts the trial openly. But before judgment, he must not divulge in what way the judgment will be.

In open Court.

1816. When the two parties have come before the judge for the trial, he first makes the plaintiff declare what his claim is, and if his claim has been put in writing before, he causes it to be read and makes him confirm for himself what is contained in it.

Claim by plaintiff.

Secondly, he asks the defendant to answer. He asks him,



saying, "The plaintiff makes a claim against you in this way. What do you say."

Admission  
or denial by  
defendant.

1817. If the defendant admits the claim, the judge gives judgment against him on his admission. And if he denies, the judge calls for evidence from the plaintiff.

Proof by  
plaintiff.

1818. If the plaintiff proves his claim by evidence, the judge gives judgment for him. And if he does not prove it, by reason of their remaining his right to an oath, if he demands it, upon the demand of the plaintiff, the judge offers the oath to the defendant.

Oath by  
defendant.

1819. If the defendant takes the oath, or, the plaintiff does not administer the oath, the judge prohibits the plaintiff from disputing with the defendant.

Refusal of  
oath by  
defendant.

✓ 1820. If the defendant refuses the oath, the judge gives judgment on that refusal. And after he has given judgment on the refusal, if the defendant says, "I will take the oath," he no longer pays attention to him.

Judgment  
based on do-  
cuments.

1821. The giving judgment upon a title-deed. without evidence, or on a written judgment given by the judge of a Court, being according to rule, and free from suspicion of fraud and forgery, is good.

When  
defendant  
does not  
confess or  
deny.

1822. If the defendant after being asked in the way above stated, gives no answer "Yes" or "No" and perseveres in keeping silence, his silence is counted for denial.

And if he makes answer, saying, "I do not confess and I do not deny," this answer is also accounted a denial, and in both cases the plaintiff is called upon for evidence as stated above.

Cross claim  
by  
defendant.

1823. If the defendant, in the place of admitting or denying, has introduced a claim which will defeat the claim of the plaintiff, it is conducted in accordance with the precepts set out in the book about evidence and the book about actions.

No  
interruption.

1824. Until one of the parties has finished his explanation, the other must not bring his explanation. If he does, he is stopped by the judge.

Interpreter.

1825. A reliable and trustworthy interpreter must be found in the Court to interpret the statement of any of the parties not knowing the language.

Settlement.

1826. When in a case which has taken place between relations, or, there is expectation that the two parties are inclined to compromise, the judge once or twice advises and warns the two parties to compromise. If they are willing to do so, he makes the



compromise in accordance with the precepts written in the book about compromise. And if they are not willing, he completes the trial.

1827. After the judge has completed the trial, he makes known to the parties what they are required to do by the judgment, and puts in order a written judgment ('ilam) containing the orders and decision (hukm) together with its reasons and causes, and he gives a copy to the person in whose favour the judgment is given, and, if necessary, also to the person against whom judgment is given.

Written judgment.

1828. It is not permissible for the judge to delay the judgment after the conditions and grounds of the judgment have been completely found.

Delay.

## CHAPTER II.

*Is about judgment and is divided into two sections.*

### SECTION I.

*Is about the conditions of a judgment.*

1829. It is a condition that an action precedes a judgment.

Must be an action.

So that a judge's adjudging a thing dependent on the rights of persons is dependent on their being first a claim in Court made by someone against someone for that thing.

A judgment which has been given, without a previous action being brought, is not good.

1830. It is a condition that the two parties be present at the time of the judgment.

Presence of parties.

Therefore, after there has been a trial between two opposing parties, it is necessary for a judgment being given, that they be present at the time of the meeting for the judgment being given.

But when one person has claimed something in an action against another, and the defendant, after admitting the claim, before judgment has gone away from the sitting for the judgment, the judge can give judgment based on his admission, in his absence.

Likewise, when the defendant denies the plaintiff's claim, and after the plaintiff has produced evidence in support of his action in the presence of the defendant, if before the examination into the credibility of the witnesses and the judgment, the defendant leaves the meeting for judgment, the judge can examine into the credibility of the evidence and give judgment in his absence.



Presence of  
vekyl.

1831. After evidence has been produced in the presence of the vekyl of the defendant, if the defendant is present personally at the sitting for judgment, the judge can give judgment against the defendant on that evidence.

And on the other hand, after evidence has been produced in the presence of the defendant, if the vekyl is present at the sitting of the Court, the judge can give evidence in the presence of the vekyl upon that evidence.

Presence of  
heirs sued.

1832. In an action which is directed against all the heirs, when evidence has been produced in the presence of one of the heirs, if he goes away before judgment, the judge can give judgment on that evidence in the presence of another of the heirs who has been brought, there is no necessity for the evidence being given again.

## SECTION II.

*Is about judgment in the absence of the defendant.*

Defendant is  
summoned.

1833. On the application of the plaintiff, the defendant is summoned to the Court by the judge.

If he refuses to come to the Court, or to send a vekyl, when there is no lawful excuse, he is brought to the Court by force.

Appoint-  
ment of  
vekyl for  
defendant  
not appear-  
ing.

1834. When the defendant refuses to come to the Court or send his vekyl, in case it is not possible to make him come, on the demand of the plaintiff a summons on paper which is special to the Court is sent to him three times on separate days. And if, being summoned, he does not come, the judge informs him that he will hear the claim and evidence of the plaintiff and appoint a vekyl for him. If on this the defendant still does not come and does not send a vekyl, the judge appoints someone vekyl for him to protect his rights, and in the presence of the said agent hears and enquires into the claim and evidence of the plaintiff, and if it is true, after it is proved, he gives judgment.

Judgment  
communi-  
cated.

1835. A judgment, which has been given, in a lawful way, in the absence of the defendant, is communicated to him.

Plea in  
avoidance  
after judg-  
ment in  
default.

1836. When a person against whom a judgment has been given in his absence appears in Court and commences a claim which is a good rebuttal (defi') of the plaintiff's action, it is heard and decided in the way necessary. If he has not commenced an action in rebuttal of the claim, or, if he does so, and it is not a good rebuttal of the claim, the judgment given is put into execution and carried out.



## SECTION III.

*Is about the review of a claim after judgment.*

1837. It is not permitted to reconsider and hear claims, when there is a decision (hukm) and written judgment (i'lam) in conformity with the principles of the Sher' Law, i.e., when the conditions and grounds of the judgment exist.

No review  
when judgment legal.

1838. When the person, against whom judgment is given, claims that a judgment given in an action does not conform with Sher' principles, and points out in what respect it does not conform, and claims the rehearing of the claim, in that case, if, after enquiry, the judgment given is in accordance with legal principles, it is confirmed. If not, it is reheard.

Review  
when contrary to law.

1839. If the person against whom judgment is given is dissatisfied with the decision given in an action, and claims the rectification of the written judgment containing that decision, in that case, if after examination, it is in conformity with the principles of the Law, it is confirmed, if not, it is annulled.

Judgment on  
review.

1840. A claim of the defendant in rebuttal (defi', Art. 1631) of the plaintiff's action is good both before and after the decision (hukm).

Claim to  
avoid action.

Therefore, in case a person, against whom judgment is given in an action, brings an action in rebuttal of the plaintiff's claim, by alleging and declaring a good ground for rebutting the action, and demands the trial of his claim, in this case his claim is heard in the presence of the person in whose favour judgment was given, and a trial is held in regard to this matter.

*For example.*—When someone has brought an action and proved that a house which is in the possession of another passed to himself as inheritance from his father, and, after the judge has given his decision (hukm), if the person in possession sets up a claim, that the father of the original claimant formerly sold that house to his father, and produces a clear title-deed upon which men act, if this claim is heard and proved, the judgment is annulled and the claim of the original claimant is rejected.

## CHAPTER IV.

*Sets out precepts about the appointment of an arbitrator.*

1841. It is permissible to appoint an arbitrator in actions for property, dependant on the rights of people.

When arbitrator may  
be appointed.



Jurisdiction  
of arbitrator.

1842. The judgment of an arbitrator is only lawful and *nafiz* (Art. 113) as regards the persons who have appointed him, and in respect of the matter for which he was appointed. He cannot go beyond to persons other than these, and he also cannot include other matters for them.

Two or more  
arbitrators.

1843. A number of arbitrators is permitted, so the appointing of two or more persons to be arbitrators in one matter is permitted.

If the plaintiff and defendant each appoint an arbitrator it is lawful.

All must  
agree.

1844. When there are a number of arbitrators as stated above, it is necessary that the opinion of all be favourable. One alone cannot decide.

Appoint-  
ment of  
umpire.

1845. If the arbitrators are authorised to appoint an arbitrator by the parties, they can appoint another person arbitrator. If not, they cannot.

Time.

1846. When the appointment of arbitrators is limited by time, at the expiration of that time it is at an end.

*For example.*—An arbitrator appointed, for a month from such a day, to decide a matter, can decide it only in this one month. On the expiration of that month, he cannot give judgment. If he does, the judgment is not *nafiz* (Art. 113).

Dismissal of  
arbitrator.

1847. Before the decision of the arbitrator, each of the parties can dismiss him. Except.—When the two parties have appointed an arbitrator, and a judge appointed by the Sultan and authorised to appoint a representative, has also given him permission, and, by reason of the judge having appointed him, he is in the position of representative of the judge.

Decision  
binding.

1848. As the decision of judges in respect of all the inhabitants in their Districts must be enforced, so also the decisions of arbitrators in respect of the persons who appointed them, and the matter for which they are appointed are binding.

Therefore, after arbitrators have given a decision in accordance with the principles of the *Sher'* Law, neither of the parties can refuse to accept the decision.

Confirma-  
tion by  
judge.

1849. When the decision of the arbitrator is represented to a judge appointed by the Sultan, if it is in accordance with the principles of Law, it is accepted and confirmed. If not, it is not.

Compromise  
by  
arbitrator.

1850. If the two parties who have appointed arbitrators, authorise them also to arrange by compromise, if they think fit,



an arrangement, by way of compromise made by the arbitrators is good.

So that if one of the parties has appointed one of the arbitrators his vekyl for arrangement by way of compromising the matter in dispute, and the other party has appointed the other arbitrator, and they arrange a compromise in accordance with the precepts written in the book about compromise, one of the parties cannot refuse to accept this compromise and arrangement.

1851. If a person has not been appointed arbitrator, and after he has decided a dispute between two persons, the two parties assent to it, and accept his decision, the decision is nafiz (Art. 113). (See Art. 1453).

Decision by person not an arbitrator, which is accepted.

Imperial Irade,  
26th Sha'ban, 1293.

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